

Group of International Finance Centre Supervisors

Standard on the Regulation of Trust and Corporate Service Providers (as amended)

First Round Mutual Evaluation Report

Bermuda

Adopted 10 November 2021

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Contents

Page

Background

3

Summary and key findings

9

Review of compliance with Part 2 - the Principles of Regulation

14

Review of compliance with Part 3 – the Standard

19

Background

1. The Group of International Finance Centre Supervisors was in its original form established in October 1980 at the instigation of the Basel Committee on Banking Supervision, as an association of the relevant authorities concerned with the supervision of banks and related financial services primarily engaged in cross-border activities – nowadays referred to as international finance centres.
2. While maintaining a close working relationship with the Basel Committee on Banking Supervision the Group has since developed into a body which has represented the interests of member jurisdictions on a range of banking supervision matters, AML/CFT issues, supervision of funds and securities activities, and the regulation of trust and company service providers (TCSPs). In the mid-1990's the Group became an observer body attending meetings of the FATF. It is also a member of the FSB Regional Consultative Group for Europe, and a member of the Basel Consultative Group.
3. Twenty-one jurisdictions were members of GIFCS as at July 2021.
4. In 2002 the Group published a paper on best practices in the regulation of Trust and Company Service Providers. Building on the significant experience of GIFCS members with licensing and regulating TCSPs, a new Standard for the Regulation of TCSPs was issued in October 2014. That Standard has now developed into a full regime embracing a Multi-Lateral Memorandum of Understanding, peer group assessments of members' compliance against the Standard, and meetings of colleges of supervisors on an as-needed basis.
5. The Standard incorporates the following objectives:
 - customers of TCSPs should receive a degree of protection equivalent to that afforded to the customers of other financial institutions.
 - TCSPs should be subject to a similar regulatory regime as other financial institutions.
 - to be effective, standards should be applied internationally.
6. The Standard notes that “Regulators should view the Standard as a minimum requirement that sets out the broad framework for TCSP oversight, which can be tailored to each jurisdiction’s individual needs. Regulators should apply the Standard to all TCSPs in their jurisdiction. Jurisdictions may satisfy the Standard by adopting requirements which are of substantially similar effect and may impose higher standards in some or all areas where national legislation requires. It is recognized that the Standard may be supplemented by other measures in individual jurisdictions designed to mitigate risks of TCSPs.”
7. Following initial self-assessments by members, in November 2016 GIFCS agreed to commence a first round of mutual evaluations against the Standard.

8. This is the report of the first round mutual evaluation of Bermuda. The process adopted is described below. The evaluation was interrupted by the global pandemic and therefore the customary onsite visit could not be undertaken. In its place a week of virtual discussions, including the sharing of supporting documents, took place in December 2020. A number of other virtual discussions were held to seek further explanations and discuss findings.
9. This report:
 - Evaluates technical compliance with the Standard;
 - Evaluates effectiveness in applying the Standard in practice, using a broad range of measures of effectiveness appropriate to the subject matter.
10. A high level methodology for conducting evaluations and for assessing effectiveness are set out on GIFCS' website¹.

The first round mutual evaluation process

11. The following process was adopted:
 - The Bermuda Monetary Authority (“BMA”) submitted a technical self-assessment;
 - The BMA provided information on effectiveness of implementation;
 - Assessors reviewed the information provided;
 - In place of the customary onsite visit, a week of virtual discussions was arranged by the BMA in December 2020. The meetings were held with key staff in the supervisory, legal, enforcement, risk and policy areas of the BMA, as well as with the Deputy Chief Executive of the BMA. In addition GIFCS team members met with the Solicitor General’s office and Attorney General’s Chambers, Bermuda Police Service, Financial Intelligence Agency and two TCSP companies.
 - Draft analysis sheets and drafts of the visit report were prepared and circulated to the BMA for comment. Further exchanges took place;
 - There are no items requiring disambiguation;

¹ At https://www.grouppifcs.org/letsgo/uploads/tcspmethodology_002.pdf and <https://www.grouppifcs.org/letsgo/uploads/tcspeffectiveness.pdf>

- The draft report has been provisionally agreed with the BMA and is now being circulated for Plenary discussion. Subsequent to the Plenary’s discussion the draft will be reviewed by a GIFCS panel of 2-3 members for a ‘sense check’, prior to the intended publication by the BMA.
12. GIFCS will invite each assessed jurisdiction to give feedback on the mutual evaluation process following its first round evaluation. The assessors believe that this should further support and benefit the development of the mutual assessment process.

Assessment philosophy and approach

13. In conducting the assessment, the assessors took into account the following considerations:
- GIFCS members have committed to meet the Standard;
 - Self-evaluation is an important component of the overall evaluation process. Self-evaluation should be accurate and effective – it should lead to action where necessary;
 - Mutual evaluation should take into account the extent to which the assessed jurisdiction’s self-evaluation has been accurate and has demonstrated a pro-active approach to correction of any deficiencies against the Standard which were self-identified;
 - The findings of other external evaluations should be taken into account in the GIFCS mutual evaluation process (having regard to the scope of such evaluations and the time elapsed since they were undertaken). CFATF’s mutual evaluation report of Bermuda was published in January 2020, and the findings are reflected in this TCSP report by GIFCS.
14. The staff of the BMA gave the mutual evaluation team full cooperation and assistance throughout the exercise. The conduct of the evaluation has differed from previous similar exercises, in particular because of the exceptional effects of the pandemic on resources and having to work remotely. An onsite visit is usually an important part of determining the effectiveness of a regime, since it provides the opportunity to see and test first-hand how the supervisory process is operating. As this was not possible for the current exercise considerable time was spent in virtual discussions with technical staff, and in examining documentary evidence to support the assertions being made. The evaluation team felt that although the virtual experience was not a full substitute for a physical visit, sufficient dialogue and evidence-review took place to enable it to make informed judgements on effectiveness.

Ratings to be used

15. The GIFCS methodology applies ratings set out below. These were applied during the review process at individual paragraph level in the main Standard (part 3). Ratings are not applied to the Principles (Part 2).

Rating	Description
Compliant	In place and being effectively applied through legislation and/or other enforceable arrangements
Largely compliant	In place and largely being applied, but possibly lacking full enforceability
Partly compliant	Effective measures planned with political support, with introduction and implementation in demonstrable progress
Non-compliant	Requirements not planned, or not in progress as per 3 above.

16. Ratings at section (ie Parts 3 A-J) level for the summary report are compiled taking into account the paragraph ratings in each section as at the date of the virtual discussions. Subsequent events are reflected in the text of the report but not the ratings.

Disambiguation and guidance

17. As part of the evaluation process a number of discussions took place to deepen understanding about the supervisory regime and the provisional findings. However, no matters arose requiring a process of disambiguation.

18. Evaluation against a Standard is an iterative process in which both the evaluated jurisdiction and the standard-setting body learns from the experience. Jurisdictions share the benefits of their experiences, and the relevant standard and methodology are refined as a result of learning points arising.

The jurisdiction

19. Bermuda is an Overseas Territory of the United Kingdom. It is located approximately 570 nautical miles south east of North Carolina in the USA and its key access points are from

the USA, UK and Canada. Bermuda exercises a high degree of control over its own affairs except for foreign affairs, internal security and defence.

20. In 2020 Bermuda's population was approximately 62,000. Its economy is based primarily on international financial services and tourism, both of which comprise a significant portion of Bermuda's GDP of US\$7.48bn in 2019 (US\$117,089 per capita). The Bermudan dollar is pegged to the US\$ at a fixed rate of US\$1/BD\$1.

The TCSP sector in the Bermuda

21. As at 30 June 2020 there were 127 licensed TCSPs in Bermuda, as follows:

Licensed trust businesses	28
Corporate service providers	99

22. In the same year there were a little over 15,000 active companies (of different types) incorporated in Bermuda.

23. Trust and company business in Bermuda is principally related to its wealth management and insurance activities. Trust companies have been regulated by the Authority since 2003 when the Trusts (Regulation of Trust Business) Act 2001 came fully into effect. The regulation of corporate service providers commenced in 2016 under the Corporate Service Providers Business Act 2012 and the first CSP licence was granted later in 2017.

24. It is estimated that the majority of CSP business is provided by the six largest entities that also conduct trust business. The majority of the initial CSP applicants were already holding trust or fund administration licences.

The regulator

25. The Bermuda Monetary Authority (the "Authority" or "BMA") is the sole regulator of Bermuda's financial services sector which comprises banks, insurance companies, investment businesses, investment funds, trust undertakings, fund administration services, money services businesses, corporate services providers, digital asset businesses, The Bermuda Stock Exchange and credit unions.

26. The Authority was established by statute in 1969. Its role has evolved over the years to meet the growth in the financial services sector. The principal objects of the Authority are

to: manage exchange control; issue and redeem notes and coins; supervise, regulate and inspect all financial institutions operating in or from Bermuda; promote the financial stability and soundness of financial institutions; supervise, regulate or approve the issue of financial instruments by financial institutions or by residents; assist with the detection and prevention of financial crime; assist foreign regulatory authorities in the discharge of their functions; perform the duties conferred on it by section 5 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; establish and administer an innovation hub to facilitate the development of innovative business in Bermuda; and foster close relations between financial institutions themselves and between the financial institutions and the Government.

27. As a monetary authority the BMA is further mandated to manage and regulate transactions in foreign currency or gold on behalf of the Government; advise and assist the Government and public bodies on banking and other financial and monetary matters; and perform such other functions as may be necessary to fulfil the BMA's principal objects.
28. The affairs of the Authority are managed by a Board comprising ten non-executive directors appointed by the Minister of Finance from various sectors of industry. The Minister also appoints the Executive Chairman of the Board. At the time of the evaluation the Executive Chairman additionally fulfilled the role of Chief Executive, with a Deputy Chief Executive also in place.
29. The Authority's supervisory operations are divided into four teams: Banking, Trust, Corporate Services and Investment ("BTCSI"); the Insurance Supervision Department; the Anti-Money Laundering and Anti-Terrorist Financing Department ("AML"); and the Fintech Department.
30. The supervisory departments are supported by a number of operational/service departments within the Authority including:-
 - Corporate Authorisations
 - Policy and International Affairs
 - Legal and Enforcement
 - Financial Stability
 - Actuarial Services
 - Finance and Operations
 - Human Resources
31. As at May 2020 the Authority comprised 221 staff.

Report date and post-visit events

32. The report is based on the position as at the last day of the formal “onsite” virtual dialogue which was 11 December 2020.
33. Post-visit events are referred to if a change is in effect six weeks before the presentation of the report to the GIFCS Plenary Session for adoption.
34. In this mutual evaluation there was one post-assessment development specifically to highlight. Enforcement powers were previously delegated to the CEO who in turn sub-delegated to the Enforcement Committee (see paragraph 85 below). However, in July 2021 the position changed and the enforcement powers are now delegated by the Board directly to the Enforcement Committee.

Summary and key findings

35. As an established regulator of financial services the BMA was able to demonstrate a high degree of technical compliance across most aspects of the Standard, supported by a strong level of effectiveness. In the context of the evaluation this particularly applied to the regulation of trust companies which has been in operation since 2003.
36. However the supervisory regime in respect of CSPs is still evolving. The Corporate Service Provider Business Act was enacted in 2012 and the first licence was issued in 2017. There are a number of certain prudential aspects which have still to be addressed in relation to financial soundness and accounting matters and these adversely affect technical (and effectiveness) compliance. To comply with the Standard the scope of regulated TSP and CSP activities needs to be expanded in relation to trust services and directorship services (see paragraph 94 below).
37. In their discussions with the BMA the assessors noted that the BMA was very cognisant of these deficiencies and heard that it was still “on a journey” further to develop its CSP supervisory regime. This is regarded as especially important as CSP activity is regarded as being of higher risk, albeit mainly in an AML/CFT context, and if not effectively supervised across all aspects of regulation could affect Bermuda’s reputation. It should be noted that, notwithstanding the prudential issues, Bermuda’s AML/CFT legislation and supervisory oversight already cover CSPs in the manner recently reviewed by the CFATF.
38. The detailed evaluation of compliance with Parts 3A-J of the Standard is set out below. In most other areas the assessors noted a high level of compliance but with some recommendations for strengthening on certain particular points.
39. The assessors had detailed discussions around the subject of enforcement where the BMA was able to demonstrate a largely compliant position. It is common for supervisors to rely heavily on remediation to address shortcomings but, in addition, a strong enforcement

function is essential for demonstrating a firm position and imposing visible and meaningful sanctions where conduct has fallen significantly short of requirements and poses a threat to users of the financial system. The assessors noted that the BMA is further reorganising its enforcement procedures to strengthen its position.

40. The BMA appears to have a good relationship with its stakeholders. The evaluation included virtual meetings with TCSP industry participants who were understanding of the regulatory position, conveyed a culture of compliance, and said that they drew value from their ongoing dialogue and relationship with the BMA.

AML/CFT

41. In Bermuda's national risk assessment for AML/CFT, as last updated in 2017, both the trust and corporate provider sectors are recognised as having a high inherent ML risk. This is a view similar to that found in many other countries and reflects the risk profile of clients who can often be high net worth, PEPs, and resident or non-residents. International finance centres including Bermuda also conduct a significant amount of non-face to face business introduced through intermediaries, which give rise to specific risks needing to be properly managed.

42. A CFATF mutual evaluation report on Bermuda was published in January 2020. This stated² that:

“Bermuda has a sound legal and risk-based supervisory framework, with the BMA having robust supervisory procedures and practices, a sound understanding of the risks of its sectors and good communication with its sectors. The BMA is also a strong, professional and well- resourced risk-based supervisor, and is demonstrating effective supervision of the high-risks FIs and TCSP sectors which carry the bulk of the AML/CFT risks in Bermuda.”

43. Bermuda has maintained a beneficial ownership regime for incorporated companies for many years, and more recently has significantly enhanced its regime with requirements for companies to maintain registries, keep them updated and file information with the BMA. Beneficial ownership information which is held is available to competent authorities and for international co-operation.

44. The CFATF report included recommendations³ in relation to bringing private trust companies and Private Act companies within the scope of this transparency, and to

² Key Finding (a), page 92

³ Key Findings, Recommended Actions, page 114

monitoring CSPs to ensure that they are holding adequate beneficial ownership information for all companies. Bermuda states that it has been actively addressing the highlighted recommendations, formal updates for which are expected to be presented in its Follow-Up Report to the CFATF Plenary in May 2022.

45. In view of the very recent conduct of the CFATF mutual evaluation the GIFCS evaluation team relied significantly on the CFATF findings for determining compliance with a number of the Standard's requirements in Part I covering financial crime.

Supervisory process

46. Part IVA of the BMA Act gives the Authority the power to supervise, regulate and inspect financial institutions under section 20A. Every person, body or entity specified in the Third Schedule of the BMA Act (referred to as a "financial institution") operating in or from within Bermuda is subject under the Act or the Regulations made thereunder for supervision, regulation and inspection by the Authority
47. Trust business is defined as persons who carry on trust business within the meaning of section 9(3) of the TBA, and Corporate Service Providers as persons who carry on business within the meaning of section 2(2) of the CSPA.
48. The BMA operates a risk-based approach to supervision, deploying a number of off and onsite tools. It has broad power under the TBA and the CSPA to obtain information, carry out on-site inspections and carry out thematic reviews
49. The prudential and AML/CFT supervision teams conduct onsite visits as part of the oversight regime.
50. As part of the process, the Authority also carries out internal thematic reviews based on information submitted by financial institutions as part of their annual filings, during onsite visits and from prudential meetings. Prudential meetings are held with financial institutions and profiles are maintained on each financial institution by the Relationship unit. This information is used to further evaluate the sector and to monitor effectiveness of the supervision plan and changes to be made.

GLOSSARY

51. The report follows the definitions established in the Standard and set out in Part 1 of the Standard for the following terms:
 - Client

- Client Money
- Controller
- Key Person
- Shareholder Controller
- TCSP
- Vehicle

52. Additional terms and abbreviations used in this report include:

BMA	Bermuda Monetary Authority
BMA Act	Bermuda Monetary Authority Act 1969, as amended
BMA Enforcement Guide	Statement of Principles and Guidance on the Exercise of Enforcement Powers, September 2018
CFATF	Caribbean Financial Action Task Force
CGEC	Corporate Governance and Ethics Committee
CoP	Code of Practice
CSP	Sub-set of TCSPs, relating specifically to the provision of services to companies and other legal persons
CSPA	Corporate Service Provider Business Act 2012
FIA	Financial Intelligence Agency
GIFCS	Group of International Finance Centre Supervisors
MCL	Minimum criteria of licensing
MOU	Memorandum/a of Understanding
NRA	National Risk Assessment
PTC	Private trust company
Regulatory Acts	For the purpose of this report, collectively the BMA, CSPA and TBAs

SoPs	Statement of Principles
TBA	Trusts (Regulation of Trust Business) Act 2001
TCSP	Trust and Company Service Providers, as defined in the Standard, is used generically in this report, to cover either or both of CSP and TSP services.
TSP	Sub-set of TCSPs, relating specifically to the provision of services to trusts and other legal arrangements
The Standard	Standard on the Regulation of Trust and Corporate Service Providers as issued by GIFCS in 2014 and revised in December 2018
UBO	Ultimate beneficial ownership

PART 2 - THE PRINCIPLES FOR REGULATION

53. The first substantive section of the Standard is the Principles for Regulation (Part 2 of the Standard).
54. The Principles set out high level objectives, covering the regulator, the regulatory regime, domestic and international cooperation, enforcement, and other requirements for the jurisdiction.
55. GIFCS has agreed that the Principles are to be addressed as a whole rather than point by point for technical compliance and effectiveness. The Principles are in turn supported by the more detailed and granular material in the Standard itself (Part 3 of the Standard document).

Observations relating to Part 2 of the Standard - the Principles

Summary

- **The BMA and the jurisdiction were able to demonstrate they were compliant with most of the Principles**
- **Assessors drew attention to matters concerning the prudential regime for corporate service providers**

Principles for regulation – 2.1 relating to the Regulator

56. The responsibilities of the Bermuda Monetary Authority (the “Authority”) are clearly set out in section 3 of the Bermuda Monetary Authority Act 1969 (the “BMA Act”), as its primary objects. TSP and CSP activity is defined in separate Acts.
57. The Authority is a statutory body corporate established under section 2 of the BMA Act. The BMA Act vests the Authority with the power to create its own rules, operating procedures and organisational structure separate from those that exist in Government.
58. The relationship with the Minister of Finance and Government is set out in section 21 of the BMA Act. The BMA acts as an advisor on policy matters related to financial institutions and monetary or financial matters, may act as an investment advisor to Government or any public authority, may act as an agent for Government where it can do so appropriately and consistent with its functions under the BMA Act.

59. The Authority is required to prepare annually a report on its operations and a copy of the annual statement of accounts certified by the Auditor four months after the end of the financial year. The Authority is mandated by the BMA Act to submit this report and the audited financial statement to the Minister of Finance who is required to lay the report before the House of Parliament.
60. The Minister of Finance may direct the Authority on matters related to financial policy and monetary matters. (Refer to section 21(2) of BMA Act re public interest). There is also a power vested in the Minister to give directions under section 8 of the TBA. This power is intended to deal with high level policy directives. We are informed that to date these powers of the Minister have not been exercised.
61. The Board has imbedded in its annual review, an assessment of the work performed by the Board and by each of its members. To further enhance the assessment process, the BMA has engaged a third party with experience in carrying out board assessments to assist with the preparation of the assessment questionnaires, the review of the responses of Board members and the preparation of a report.
62. Under section 4 of the Bermuda Monetary Authority Act 1969 the non-executive Board members are appointed by the Minister of Finance provided they meet the criteria set out in the Act. The CEO is appointed by the Board with the approval of the Minister.
63. The Authority is vested with wide ranging powers to carry out its functions to regulate financial institutions as set out in the regulatory Acts. As an integrated regulator, the Authority exercises similar powers to regulate all financial services institutions falling within its remit.
64. Under the BMA Act, the Authority is vested with the responsibility for preparing its budget (section 26 of the BMA Act) and having its accounts audited annually (section 27 of the BMA Act.)
65. The BMA publishes its Annual Report on its website and prepares an annual budget which is submitted and approved by the Minister of Finance. We were informed that there was no push-back from the Minister in BMA budgeting for all necessary supervisory and enforcement activities. At the end of 2019 the BMA had capital and reserves of B\$37.2mn.
66. Some 91% of revenue is derived from fees paid by licenceholders: fee increases are set by Parliament.
67. In relation to the capacity of the Board, there is a balance of representation of sectoral interests. Board members presently do not receive AML/CFT training specific to their role at the BMA, although we were informed they should have knowledge from previous experience and that a training programme is presently under development.

68. There is an internal conflicts policy. A conflicted Board member has no vote. A Board member is required to recuse him/herself if there is any discussion of any particular entity with which the member may be affiliated or involved.
69. The Authority has in place measures to ensure that its regulatory framework is clear, transparent and consistent. All legislation, regulation, guidance, codes are published on the BMA's website.
70. The Authority publishes its business plan each year which sets out the work which it intends to undertake. This report sets out the strategic plans of the Authority relating to changes and implementation of its regulatory framework and procedures and outreaches.
71. The Board's commitment to maintain standards of ethics and professional conduct is set down in the Board's Code of Conduct. The Employee Handbook sets out the standards of professionalism and ethics imposed on all staff members. (This is embedded as a term of employment for Staff and the appointment of Board members).

Principles for Regulation – 2.2 relating to Regulation

72. The Authority has developed and implemented a comprehensive framework for identifying, assessing, monitoring and mitigating/managing the build-up of risk that may pose a threat to the financial stability in Bermuda or outside of it. The Financial Stability Department (FSD) is the dedicated BMA resource responsible for leading on this. Its Macprudential Surveillance Unit carries out systemic risk assessments on an on-going basis.
73. The BMA has entered into a dedicated MoU with Bermuda's Ministry of Finance aimed at addressing island wide systemic risk issues. The MoU provides for the formation of a Financial Policy Council (the "Council") of which the BMA is a member.
74. In relation to financial crime risks, the BMA is fully engaged with the National Anti- Money Laundering Committee (NAMLC) in the preparation and ongoing update of the National Risk Assessment for both Money Laundering and Terrorist Financing.
75. There is a clear understanding of risk-based supervision. However it was not entirely clear to the assessors that the Board's risk appetite in respect of TCSP licensing and ongoing conduct had been clearly defined: this was felt to be important in view of the fact that the TCSP sector is generally viewed as of higher risk – for conduct and AML/CFT purposes. In reply the BMA said that the Board was fully engaged on licensing and supervisory issues for the sector and had initiated enhanced reporting and regular updates.
76. BMA's statutory objectives enable it to carry out prudential supervision of financial institutions including prevention of financial crime, anti-Money laundering and combating

the financing of terrorism. Supervision plans are based on the Authority's risk-based model and approach to onsite/offsite supervision.

77. The BMA carries out a risk self-assessment of all its functions under the direction of the Board's Sub-Committee, the Audit and Risk Committee ("ARMC"), to identify areas where additional risk controls may be indicated.
78. The regulation of trusts business is conducted under the TBA 2001. CSP business came to be regulated later in 2016 under the CSP Act 2012 although the licensing process for existing businesses was not completed until 2017/18.
79. Supervisory powers for the BMA under the CSP legislation are broadly adequate. However, as detailed in the assessors' comments below on compliance with Part 3G of the Standard there are a number of important areas where specific prudential requirements have not been fully developed for CSPs. The BMA has confirmed that it is on course to raise standards in these areas.
80. The Authority is focused on reviewing and refining the perimeter of its regulation. As an example, at the perimeter the BMA's reach has extended to the fintech sector, where the regulatory implications for new innovations are being addressed.
81. The Authority has broad powers under the TBA and the CSPA to obtain information, to carry out on-site work and to conduct thematic reviews.

Principles for Regulation - 2.3 relating to Co-operation

82. The Authority has statutory authority to share and disclose both public and non-public information with domestic and foreign counterparts pursuant to the powers afforded to it under sections 30A, 30B and 31 of the BMA Act and reinforced by the Regulatory Acts.
83. The Regulatory Acts establish a general legal "gateway" for the disclosure of information by the Authority to its counterparts exercising a similar duty (and upon whom similar restrictions on disclosure of information are imposed under appropriate laws), to that of the Authority under Bermuda law. In this connection, the Regulatory Acts empower the Authority with the discretion to determine the best method of disclosure of public/non-public information to its foreign or domestic counterparts.

Principles for Regulation – 2.4 relating to Enforcement

84. Enforcement powers are generally viewed as adequate.

85. Enforcement is delegated by the Board to the CEO who has in turn conferred these powers to an Enforcement Committee⁴. This is chaired by the CEO and comprises nominated senior management staff.
86. Board members may offer advice to the committee but do not take part in decision making. At the time of the evaluation the Enforcement Committee was revising its existing terms of reference and accompanying guidelines
87. Following consultation the Authority has taken steps to further strengthen the enforcement process to complement impending changes to the appeal process. In particular, the Authority has designated the present Enforcement Committee as a decision-making committee. The Authority is proposing to adopt a procedure of settlement, while reinforcing its internal procedures including ensuring there is more clarity as to when enforcement has been commenced. Necessary legislative changes to the appeals process are being led by the Ministry of Finance.
88. In discussion the assessors have drawn attention to the importance of being able to demonstrate a robust enforcement function in deserving cases, including in relation to individuals and in addition to the more routine actions of seeking remediation on matters of non-compliance.

Principles for Regulation – 2.5 relating to other requirements on Jurisdictions

89. Assessors were satisfied that the BMA demonstrated compliance with the requirements of this section.

⁴ See also post-assessment development referred to in paragraph 34 above

PART 3 - THE STANDARD

Observations relating to Part 3A of the Standard - Licensing

Summary

- **The BMA was able to demonstrate that the regulatory regime relating to licensing is largely compliant with the Standard. An otherwise-compliant position was principally affected by two recommendations.**
 1. **It is recommended that the scope of the licensing requirements is extended:
for CSPs, to cover all persons providing directorship services (subject to a de minimis number if necessary), and
for trusts, beyond the existing definition of trust business - which currently refers only to trustee services - to include administrative and all other services to trusts.**
 2. **It is further recommended that the CSPA is amended to incorporate a specific requirement of financial soundness for CSPs.**

This framework should allow for:

The Regulator to license TCSPs that want to operate in or from within the jurisdiction

90. The BMA is the sole financial regulatory authority in Bermuda and has responsibility for regulating all financial institutions. BMA Act section 3 (principal objects) authorises it to “supervise, regulate and inspect” any FIs which operate from Bermuda. The Third Schedule of the Act identifies FIs including the undertaking of the TBA and CSPA.
91. Section 4A and 4 of the TBA and CSPA respectively define activities that are considered trust and CSP business in Bermuda. In the case of trusts this relates to trustee services.
92. The CSPA provides an exemption to a company whose sole purpose is to act as a director where the company meets specific conditions as set out in the Corporate Service Providers Business Exemption Order 2015 i.e. the company is controlled by the same individual who is to provide the service of director.
93. Private trust companies are also exempted from licensing and although the BMA indicates that a majority are administered by a TSCP, there is no specific requirement that all PTCs

are administered by at least entities licensed by BMA. As such the administration of some of these structures (i.e. trust business) is being conducted by persons who are not licensed. Two PTCs were referred to as “Non Licensed Persons” and therefore subject to AML/ATF regulations only. The BMA stated that PTCs are of a lower prudential risk.

94. It is recommended that the scope of the licensing requirements is extended both to cover all persons providing directorship services, and beyond the existing definition of trust business which refers only to trustee services to include administrative and all other services to trusts.

The Regulator to assess whether a TCSP is at the time of licensing, and remains, fit and proper over the period for which it holds a TCSP licence

95. Schedule 1 of the TBA and CSPA sets out the fit and proper minimum requirements that must be met for licensing.
96. Additionally the BMA provides further guidance through its Statement of Principles (Dec 2019) for both Trust and Corporate Service Providers on a more granular level on what is considered in assessing the “fit and propriety” for the various stakeholders.
97. The licensing and supervision of corporate service providers in Bermuda is relatively new, with the first license being granted in 2017. TSPs have been licensed since 2002. The BMA framework calls for a post licensing review (some 6- 12 months) after the license has been issued, coupled with a prudential meeting within 18 months after licensing and further onsite examinations.
98. As at 31st December 2019, there were 95 licenced CSP entities. The Authority performs onsite reviews of CSP entities consistent with its risk based approach to supervision, together with prudential meetings.

The Regulator to assess whether the Controllers of a TCSP are at the time of licensing, and remain, fit and proper to hold those interests and/or positions

99. The supervisory tools eg submission of reports, post licensing and prudential meetings and onsite visits allows the BMA to effectively monitor whether Controllers continue to be “fit and proper”.

The Regulator to assess whether the Key Persons of a TCSP are at the time of licensing, and remain, fit and proper to hold those positions

100. Schedule 1 of the TBA and CSPA sets out the minimum criteria for licensing which includes the requirement for officers to be “fit and proper”. The definition of officer includes directors, secretary and senior executives by whatever name called.

101.Paragraph 10 of the SoP of both CSPA and TBA indicate that the undertakings licensed to conduct trust and CSP business are subject to ongoing assessment through the course of supervision and regulation, which includes key persons.

Withdrawal of the relevant licence in the event that a TCSP is no longer fit and proper or is in material breach of regulatory standards

102.Sections 15 and 16 of the CSPA and TBA respectively set out the criteria under which the Authority may revoke the licence of an undertaking which includes any of the minimum licensing criteria not being fulfilled or may not be or may not have been fulfilled, in respect of the undertaking and the failure to comply with obligations imposed.

103.The BMA Enforcement Guide Sept 2018, page 25 highlights that withdrawal (revocation) is the most serious enforcement option available to the Authority and is only considered when all other options “are inappropriate”.

104.The BMA provided evidence of a case where enforcement action was taken in relation to fit and proper matters

The Regulator should consider the ownership, structure, control and/or management of a TCSP. The ownership structure should not hinder effective supervision or facilitate regulatory arbitrage.

105.Sections 11 and 12 of the TBA and CSPA grants the Authority the power to license once minimum licensing criteria is met. The MCL sets out criteria relative to ownership, structure and management of the TCSPs that must be met.

106.SoPs para 23-28 and 29 (TBA and CSPA) outline the Authority’s expectations regarding fitness and propriety for Shareholder Controllers (CSPA) and for TBA requirements around entity ownership and structure in order to conduct consolidated supervision.

107.Assessment of the management and ownership structure of a TCSP is undertaken at time of licensing and ongoing. Assessments consider transparency of the ownership structure of the licensee and its group. Bearer shares are not allowed in an ownership structure.

108.The assessors had no adverse comments to make regarding technical compliance and effectiveness.

The Regulator should require that a TCSP demonstrates a physical presence in the jurisdiction in which it is regulated⁵.

⁵ The Regulator may consider that physical presence is duly demonstrated by:

- those persons who represent the mind and management of the TCSP being registered in the Regulator’s jurisdiction and actively involved in the governance of the business; and

109. The TBA and CSPA respectively have detailed provisions requiring physical presence to be maintained in Bermuda, which set out the criteria against which such determination will be measured.

The Regulator should require that a TCSP's affairs are conducted in a prudent and financially sound manner.

110. The TBA and CSPA in the 1st Schedule under the minimum criteria for licensing, paragraph 5 and 3 respectively, provide details as to what is considered in assessing whether business is being conducted in a "prudent manner". While the Acts do not directly use the term "financially sound", the consideration for "prudence" includes TCSPs maintaining adequate accounting records and maintenance of insurance coverage.

111. The TBA (First Schedule, paragraph 5 (6A)) states:

"An undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or will maintain as the case may be, adequate liquidity, having regard to the relationship between its assets and its actual and contingent liabilities, to the time at which those liabilities will or may fall due and its assets mature, and to any other factors appearing to the Authority to be relevant."

112. This requirement is not replicated in the CSPA so, apart from the general requirement referred to above in relation to conducting the business in a prudent manner, there is no specific requirement relating to how liquidity is to be determined (or any other test of solvency) as a benchmark of financial soundness.

113. It is recommended that the CSPA is amended to incorporate a specific requirement of financial soundness for CSPs, as one part of bringing the prudential regime CSPs into line with the Standard.

The Regulator should require that a TCSP has appropriate policies, procedures and controls to ensure full compliance with the anti-money laundering and the combating of the financing of terrorism requirements, including the ability to accurately detail the ultimate beneficial owners of Vehicles.

114. The AML/ATF Regulations require that TCSPs established and maintain appropriate policies to be compliant with AML/CFT requirements, including the ability to identify beneficial owners of vehicles. Furthermore, the BMA's licensing regime includes review of the AML policies to ensure they meet the standards. As part of the AML onsite examinations, policies and procedures are reviewed and sample testing conducted to confirm that appropriate information on beneficial owners are obtained.

-
- having an operational place of business in the Regulator's jurisdiction.

115. Statistical evidence was provided showing results of AML examinations in TCSPs sector. Furthermore, the annual data provided to the BMA includes an independent report on the effectiveness of TCSPs implementation of approved AML/ATF policies, which would have also been also assessed by the BMA during the licensing process

The Regulator should require that a TCSP is and remains resourced, structured and organised appropriately so that it can manage all Vehicles and assets it administers. This requirement should address policies, procedures and controls, staff capabilities and the numbers and types of appointments to Vehicles which are undertaken by staff, whether in their own name or through corporate directors or other indirect appointments.

116. The MCL requires TCSP's to carry on business with integrity and professional skills appropriate to the nature, scale, and complexity of activities. Applicants are required to provide an organisational structure which reflects management and staffing levels and reporting lines. They are expected to have sufficient experienced staff to support the size, scale, and complexity of the business.

117. A licensee is required to have relevant policies and procedures that are applicable to its structuring and resourcing. The Authority's review would include a review of succession planning, training, segregation of duties, review and approval of controls, coverage arrangements and business continuity, are just a few of the topics covered in the review process. There is a requirement that staff must have the relevant skillset required to perform their duties.

Observations relating to Part 3B of the Standard - Corporate Governance (of the TCSP)

Summary

- **The BMA was able to demonstrate that the regulatory regime relating to corporate governance is compliant with the Standard.**

Regulators should require that a TCSP has embedded within it a robust corporate governance culture and framework. The Regulator should have in place an approval process for the direction and management of a TCSP which requires that:

The Board collectively comprises an appropriate balance of skills, knowledge and competence considering its members' relevant experience such that the Board as a whole is able to discharge its duties and responsibilities effectively, and further that no individual or group of individuals can or does unduly dominate the Board's decision making

118. The BMA through its Corporate Governance Policy documents for TCSPs has set out the principles which its licensees are required to meet.

119. Principle 3 of the Corporate Governance Policy for Trusts (Regulation of Trust Business) Act 2001 (TBA) states that the size and composition of the board should reflect the scale and complexity of the institution's activities.

120. In prudential meetings, discussions held with the directors and senior executives of a licensee include determining whether the board has assessed its performance as a whole, as well as the performance of each individual director.

121. During onsite visits, the Authority's onsite team assesses whether a TCSP has implemented an effective corporate governance system consistent with its size, complexity, structure, and risk profile.

Where functions have been delegated by the Board, the Board clearly and comprehensively records the functions delegated and ultimate responsibility for the delegated functions remains with the Board

122. Principle 2 of the TBA states that institutions should be governed by an effective board of directors. The guidance for this principle under paragraph 16 requires full board oversight and ratification of key decisions. The same requirements exist for CSPs.

123. As part of the MCL under the TBA and CSPA, the Authority at the time of licensing will review the applicant's corporate governance policies and procedures, and the terms of references for any board committees that have been established.

124. The BMA has included corporate governance and delegations in a thematic review of the TSP sector in 2017 and followed up onsite examinations of those licensees which were found to be deficient, to ensure remediation. The corporate governance of CSPs has also been addressed through supervisory visits.

The management structure should be appropriate to the size, complexity, structure and risk profile of an individual TCSP

125. The second criterion of the MCL set out in the First Schedule of the TBA requires that the undertaking has corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the undertaking.

126. The BMA reviews this requirement at the licensing stage and reviews whether the proposed management structure is appropriate in the light of the business plan submitted.

127. During prudential meetings held with a licensee's senior management, the licensee is asked to explain its management structure and risk management framework.

Every Board has a minimum of two individuals to direct the business; who are sufficiently independent of each other such that each would not be unduly influenced by another Board member

128. The TBA requires TSPs to have a minimum of two board members to direct the business who are sufficiently independent of each other. In other circumstances, it may be directed by one person if the Authority deems appropriate to the nature and scale of operations.

129. For CSPs the minimum number can be that which the BMA deems to be appropriate, which gives the BMA the discretion to, if deemed appropriate, to allow less than two directors. However there remains the overriding requirement that the number and breadth of expertise is appropriate for the business being undertaken.

130. The assessors recommend that the requirements for CSPs are brought into line with those for trust businesses to make clear that the minimum benchmark is two persons. Based on the information provided by the BMA all TCSPs had a minimum of two directors.

Directors are aware of and understand their duty to understand applicable legislation, regulation, policy, rules, instructions, guidance and codes of practice to an appropriate level to enable them to discharge their responsibilities

131. Principle 4 of the TBA CGP states: directors should be, and remain, qualified, including through training for their positions. They should have a clear understanding of their role in

corporate governance and be able to exercise sound and objective judgment about the affairs of the institution.

132.The CSP regulations contain similar requirements.

133.Compliance with the CGP is assessed during prudential meetings and on-site reviews.

Boards comprise individuals that are aware of and understand the Board’s collective duty to ensuring that robust arrangements for compliance with the regulatory regime are maintained

134.For both trust and corporate service businesses the CoP underscores that the board is ultimately responsible for the compliance function.

135.The BMA expects directors to have a clear understanding of their role in corporate governance and in particular be aware of and understand the board’s collective duty of ensuring there are robust arrangements for compliance with the regulatory regimes.

136.Directors are expected to receive appropriate induction upon joining a board to include their legal duties and regulatory responsibilities .

Boards establish, implement, document and maintain an effective conflicts of interest policy for both the Board and the TCSP, which sets out the standards of expected behaviour including, amongst other matters, the treatment of any non-compliance with the policy

137.Paragraphs 29 and 30 of the TBA CGP set out that directors have a duty to avoid, manage or minimise conflicts of interest and should, wherever possible, arrange their personal and business affairs so as to avoid direct and indirect conflicts of interest.

138.As such, the board is required to have a formal written conflicts of interest policy appropriate to its size and organisation and the nature, scale and complexity of its business, and an objective compliance process for implementing the policy.

139.Directors are required to declare any conflicts of interest prior to being appointed or immediately upon discovery.

Boards ensure that they formulate and implement a suitable risk framework for the TCSP, including the production of a statement of risk appetite so that the types of business the firm is prepared to take on and risk tolerance are clear

140.Principle 6 of the CGP (TBA and CSPA) states that, “The board is responsible for risk oversight and should establish and maintain a sound mechanism to identify and address the risks which are relevant to the institution.

141.In paragraph 35 of the CGP the board should understand the risks to which the institution is exposed and establish a risk appetite, i.e. the level of aggregate risk that the institution’s board is willing to assume and manage in the pursuit of the institution’s objectives.

142. Assessors were satisfied that the BMA complies with this requirement of the Standard.

Boards undertake a periodic self-assessment of their effectiveness

143. Paragraph 28 of both the TBA and CSPA CGP requires that a board undertakes periodic assessment of its self as a whole, its individual directors and its governance practices. The board should take any corrective actions or make any improvements deemed necessary or appropriate to increase the effectiveness of its actions.

The Board retains ultimate responsibility for the compliance function, and should ensure:

That it approves and regularly reviews a compliance policy and establishes a defined and resourced compliance function

144. Paragraphs 12 and 13 of the CGP (TBA and CSPA) states “The board remains responsible for the oversight of all material functions of the business, even where such functions may be outsourced”.

145. Paragraphs 28 and 22 of the CoP (TBA and CSPA) respectively require that 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 shortcomings in the corporate service provider’s compliance framework.

146. Pursuant to Principle 7 of the CGP, the board should ensure that the institution has an effective system of internal controls. The board should approve the internal control framework and review its appropriateness at least annually. As noted in the CGP, internal control system includes the compliance function.

147. Effectiveness was demonstrated through coverage at onsite visits and thematic work.

148. The assessors were satisfied that the BMA’s regulatory regime meets the technical and effectiveness requirements of the Standard in this area.

There is periodic verification of adherence with established applicable standards

There is periodic verification of adherence with all regulatory and other legal requirements

149. Section 35 and 46 of the TBA and CSPA respectively requires every licensed undertaking to provide within four months of its financial year end a certificate of compliance certifying it has complied with the minimum criteria for licensing and the Code of Practice, which is signed by an officer of the undertaking and is appropriately binding.

150. The BMA expects an entity’s corporate governance framework to include performance evaluations completed for the board and its individual directors. Where applicable, the

Authority will request copies of the board's assessments as part of its review to ascertain the frequency, quality, outcome and subsequent corrective actions.

That necessary remedial actions to rectify any shortcomings in the TCSP's operations are taken promptly

151. The trust and corporate service providers regulations require that the board is provided with sufficient regular information regarding all legal and regulatory compliance activities to allow them to rectify any shortcomings.

152. The BMA reviews this in the course of its off and onsite work.

That there are regular reports on the performance of the TCSP's compliance function

153. Paragraph 28 of the CoP requires that the board of a trustee business is provided with regular information regarding all legal and regulatory compliance activities to allow them to rectify any shortcomings. There is a similar requirement for CSPs.

154. During the licence review process, the Authority reviews the applicant's compliance policies and procedures to ensure that the compliance function is adequately staffed by the appropriate personnel, and that there will be appropriate, regular reports generated and submitted to the board

155. The compliance function is also scrutinized as part of the AML/CFT onsite examination procedures. The onsite examination objectives include evaluating the effectiveness and compliance of the undertaking's corporate governance, compliance culture, systems, and internal control procedures.

In assessing the quality and strength of the Board of a TCSP, the Regulator should have the power to require the amendment of the composition and size of the Board

156. Where a director is also a shareholder controller, the Authority is empowered to serve notice of objection to any existing controllers where it deems that the individual is no longer fit and proper.

157. The Authority is also empowered to impose a condition on a license to require the removal of any officer (including directors) for the purpose of protecting the licensee, its clients or potential clients. These powers apply in respect of both trust and corporate service businesses.

158. The BMA has the power to require changes be made to a TCSP's Board composition and size. Although it was not evident that this specific power had been exercised it was noted that several enforcement actions had been taken by the BMA in relation to supervisory findings.

Regulators shall not permit a corporate director to be on the Board of a TCSP

159. The CoPs for both trustee and corporate service businesses explicitly require that their boards must be comprised solely of individuals.

Observations relating to Part 3C of the Standard - Controllers of TCSPs

Summary

- **The BMA was able to demonstrate that the regulatory regime is compliant with the Standard.**
- **It is suggested that the BMA amend the requirement for prior notification of a change in controller, to provide for prior approval in all circumstances.**

Fit and proper standards

The Regulator should ensure that:

the Controllers of a TCSP must be, and must remain, fit and proper

160. The Authority determines the fitness and propriety of Controllers prior to granting a licence under the TBA and CSPA . The minimum criteria for licensing are set out in the First Schedule of the TBA and CSPA ; criterion 1 requires controllers of an applicant to be fit and proper persons.

161. The TBA and CSPA Statement of Principles set forth the Authority’s interpretation and application of this criterion under Part III. The TBA and CSPA SoP paragraphs 15- 28 set out the Authority’s considerations in evaluating the fitness and propriety of controllers and shareholder controllers.

162. Paragraph 10 of the SoP indicate that the undertakings licensed to conduct trust and corporate service business are subject to ongoing assessment against MCL through the course of supervision and regulation.

163. The assessors were satisfied that through its post licensing, prudential meetings and onsite visits, the BMA is able to assess “fit and proper” on an ongoing basis.

it understands the relationship created by any debt, option, equity or beneficial interest holding in the TCSP⁶ which would make the holder of that interest a shareholder controller

164. Pursuant to TBA sections 4(4) and 4(5) and CSPA section 3(4) and 3(5), a shareholder controller is a person who either alone or with any associate or associates:

- a) holds 10 per cent or more of the shares in the undertaking or another company of which it is a subsidiary company

⁶ Both the existence of debt and options can give the holder effective control.

- b) has the power at any general meeting of the undertaking, including with another, to exercise or control the exercise of 10 per cent or more of the voting company of which it is such a subsidiary; or
- c) is able to exercise a significant influence over the management of the undertaking or another company of which it is such a subsidiary by virtue of:
- a holding of shares in; or
 - an entitlement to exercise, or control the exercise of, the voting power at any general meeting of,
- the undertaking, or as the case may be, the other company concerned.

165. The BMA's definition of a shareholder controller, its evaluation of the capital structure of the proposed TCSP and of how the shareholders have funded their investment, as well its fit and proper regime for shareholder controllers both at licensing and at the time of any subsequent change, make it compliant with the Standard. The framework is effective.

The appointment of, or change in, a Controller may only take place after the Regulator has been notified and has positively confirmed its approval of, or no objection to, the appointment via a separate vetting process

166. Under section 24 of the TBA, a person may only become majority shareholder controller after (1) having given notice to the Authority of their intentions, and (2) the Authority responding with a notice of non-objection or a 3-month period lapsing during which the Authority has not given a notice of objection.

167. The BMA's regime does not strictly meet the Standard because if an objection is not lodged by the BMA within the three-month period a new controller could remain in situ by default. This is different to where a positive confirmation has to be given in all circumstances, as required by the Standard.

where a Controller exercises a Key Person function within the TCSP, they undergo a separate approval process specific to that role

168. The TBA and CSPA require all controllers and officers to be approved, and the SoPs set out how the BMA applies the criteria.

169. Where a Controller is also a Key Person, the Authority completes the fit and proper assessment for the Key Person role, separate from the assessment conducted for the Controller role. If the Controller is also a Key Person, the fit and proper assessment would focus on the skills and experience the Controller has for that Key Person position in order to fulfil their duties.

it has powers to refuse approval and remove existing Controllers

170. The Authority is empowered to serve notice of objection to prevent the appointment of shareholder controller (section 25 of the TBA and section 23 of the CSPA).

171. Under the TBA and CSPA the Authority is empowered to impose a condition on a license to require the removal of any controller for the purpose of protecting clients or potential clients.

172. All Controllers are subject to the Authority's fit and proper assessment as outlined above. The Authority would require the removal of existing Controllers, if the fit and proper assessment and supervisory activities lead to the Authority's conclusion that a Controller is not fit and proper. A formal objection letter would be issued to the undertaking in accordance with sections 25 and 26 of the TBA or sections 23 and 24 of the CSPA

Where a Controller is associated with a jurisdiction that is assessed as higher risk by the Regulator, the Regulator should require the TCSP to demonstrate that it can manage any such risks arising

173. All Controllers are subject to the Authority's fit and proper assessment as outlined above. During the licence review process, ongoing prudential meetings and onsite examinations, the Authority reviews an undertaking's policies and procedures that govern its risk management process. The TCSP would be asked to demonstrate how they manage the risk of the Controller associated with a high-risk jurisdiction. The supporting risk registers are also reviewed which should align with the entity's risk appetite and should include the risks identified and mitigating controls. The Authority will look to determine if the entity has identified risks related to a Controller that is associated with a high risk or flagged jurisdictions, and ensure that there are appropriate mitigating controls in place including the restriction on introduced business

Integrity

The Regulator should require that any Controller acts with integrity at all times

174. The TBA and CSPA, MCL (Schedule 1) para 1(1) and (2) speak to fit and proper and probity of controllers, and we know that persons who do not meet the criteria on a continuous basis can be removed by the Authority.

Competence

Controllers who exert an influence over the day to day affairs of a TCSP should be competent

175. All Controllers are subject to the Authority's fit and proper assessment as outlined above. Regardless of whether the Controller is part of a large group or a small standalone, the Authority will seek to understand what influence the Controller will play in the day-to-day

operations of the business. It is not unusual for Controllers to hold Key Person roles and be fully involved in the day-to-day operations. As previously noted, the Authority's fit and proper assessment involves determining whether an individual has the competence to fulfil each role and perform their responsibilities to operate a prudent business.

Financial soundness

If the TCSP is part of a group, the Regulator should assess the financial strength of the group insofar as it may impact the TCSP. Accordingly, the Regulator may require copies of the parent company financial statements and other relevant information to be submitted to it.

176. Question D.2. of the TBA Appendix 3: Institutional Questionnaire (IQ) (and similarly under the CSPA for CSPs) requires audited accounts for the controller and where appropriate, audited group accounts for the controller's group for the last 3 financial years. If the most recent audited accounts are more than six months out of date, they should be accompanied by management accounts (which need not be audited) showing the current financial position and the current results of the controller. An IQ is required at licensing and when there is any change of shareholder.

177. For Controllers that are institutions, the TCSP is required to provide audited accounts for the Controller (and, where appropriate, audited group accounts for the controller's group) for the last three financial years (if available). If the most recent audited accounts are more than six months out of date, they should be accompanied by management accounts (which need not be audited) showing the current financial position and the current results of the controller. Such information is used to assess the financial soundness and strength of a TCSP's group.

The Regulator should assess the solvency of Controllers and the impact on the TCSP where any Controller has been or is likely to be declared bankrupt or insolvent or has been the subject of a money judgement

178. The fit and proper test set out in the TBA and CSPA includes financial soundness, and questions are specifically asked about any judgements or creditor arrangements which are taken into account in making a fit and proper judgement.

The Regulator should require that Controllers demonstrate clearly their sources of wealth and source of funds

179. For Controllers that are institutions, the TCSP is required to provide audited accounts for the Controller (and, where appropriate, audited group accounts for the controller's group) for the last three financial years. If the most recent audited accounts are more than six months out of date, they should be accompanied by management accounts (which need

not be audited) showing the current financial position and the current results of the controller. Such documentation will highlight the applicants source of funds, and is part of the Authority's considerations of a Controller's ability to adequately support the business

180. Revised questionnaires were introduced in November 2020 which address the matter of source of wealth.

Conflicts of interest

The Regulator should assess whether Controllers of TCSPs have any existing or potential conflicts of interest and should any conflicts exist, the Regulator should ensure that these are addressed appropriately

181. TBA Appendix 3: Institutional Questionnaire asks at question 13 about any licensee other than the trust business, which the controller holds an interest which would help flag potential conflicts. A description of the controller's business is also requested in question 4 and if this appears likely to cause a conflict, further questions will be asked. The TBA Appendix 4: Personal Questionnaire also asks at question II C if the individual controller undertakes any business with the licensee in their private capacity.

182. Paragraph 15 of the CoP covers conflicts of interest in more detail. It outlines the Authority's expectations on how licensees document conflicts and seek to avoid situations of conflict.

183. Similar provisions are included in the CSPA for CSPs.

184. During the licence review process, the Authority will review the undertaking's Corporate Governance Policy, which is a MCL requirement, to ensure that it addresses conflicts of interest. A review of the undertaking's Conflicts of Interest Policy, along with its governance arrangements for the reporting of any conflicts of interest and the remediation of those conflicts, will be reviewed and should align with the TBA CGP or CSP CGP.

Observations relating to Part 3D of the Standard - Key Persons and Other Employees

Summary

- **The BMA was able to demonstrate that the regulatory regime is compliant with the Standard.**
- **In the same way as for changes of controllers, notification is made to the BMA of changes of key persons which have occurred. The Standard is more specific and requires that a change in key person may only take place after prior notification to and approval by the regulator. It is suggested that the BMA aligns its requirement to the Standard.**

Key Persons

The Regulator should assess the fit and proper standards and ensure that the appointment of, or change in, a Key Person may only take place after the Regulator has been notified and has positively confirmed its approval of, or no objection to, the appointment via a separate vetting process. The Regulator should require that all Key Persons of a TCSP are fit and proper for their roles on an ongoing basis.

185. All key persons of TCSPs are required to be fit and proper.

186. Under section 34 and 45 of the TBA and CSPA respectively a TCSP must within 14 days give notice to the BMA of the fact that a person has become or ceased to be a key person.

187. The Standard is more specific and requires that a change in key person may only take place after prior notification to and approval by the regulator. This is to reinforce the position established at initial licensing that each key person is individually approved in advance by the regulator.

188. While in the ordinary course the current provisions give the BMA the opportunity to consider the circumstances of a change and whether, in the case of a new appointment, the key person is fit and proper, it leaves open the possibility of a delay in notification and BMA response. It is suggested that the BMA should align the requirement more closely to the Standard.

The Regulator should have the power to refuse approval to and remove a person from a Key Person role

189. The legislative framework, Sections 14 (2) and 15(2) of the TBA and CSPA respectively give the BMA the power to refuse approval and or remove Key Persons. The assessors noted that while the BMA had the powers to refuse approval of a Key Person and remove a person from a Key Person role, these powers had yet to be formally applied.

In making a fit and proper determination, the Regulator should consider integrity, competence and financial soundness

190. The CSPA /TBA SoP paragraphs 15- 22 sets out the Authority's considerations in evaluating the fitness and propriety of controllers and officers. These include integrity, competence and financial soundness.

191. The revised Personal Questionnaires which came into effect in November 2020 further address the issue of financial soundness.

Prior to appointing a Key Person, the Regulator should assess the outcome of the following checks in respect of a proposed Key Person:

criminal records; regulatory sanctions; professional reprimands; other formal censure, discipline or public criticism; refusal of the right to carry on a trade, business or profession for which a specific licence , registration or other authority is required; refusal of entry to a trade organisation; declaration of bankruptcy (or similar); civil action; whether the person is subject to any investigation personally or in relation to any associated corporation; professional or other relevant qualifications; and knowledge and/or experience relevant to the business concerned.

192. The assessors are satisfied that all the above criteria are considered by the BMA when assessing the fit and proper status of a Key Person.

Other employees

The Regulator should require a TCSP to implement controls in respect of the recruitment and ongoing assessment of all employees including directors. The Regulator should require that the TCSP:

has recruitment procedures to ensure it employs employees who are competent to perform their roles

193. Section 36 and 43 respectively of the CoP (CSPA or TBA) state "A licenced corporate service provider should maintain a high standard of recruitment practices to ensure the probity and competence of all directors, partners and employees". Once an employee has been hired, the licenced corporate service provider should have regard to continually monitor employee fitness and probity.

194.The BMA reviews ongoing adherence to this requirement in the course of its regular supervision.

appropriately supervises its employees

195.Section 34 and 41 respectively of the CoP (CSPA and TBA) “Adequate Personnel” state that a TCSP should establish procedures to ensure the adequate supervision of staff.

196.The BMA reviews ongoing adherence to this requirement in the course of its regular supervision.

regularly reviews the competence of its employees, and that the level of competence is appropriate to the nature and size of the business

197.Paragraphs 41 and 42 of the CoP require the licensed trust business to ensure that staff are appropriately trained and competent to discharge its fiduciary duties. They must also formulate and update records for training and development.

198.Paragraphs 34 and 35 of the CoP require the licensed corporate service provider business to ensure that staff are appropriately trained and competent to discharge its corporate services duties. They must also formulate and update records for training and development.

199.The BMA reviews ongoing adherence to this requirement in the course of its regular supervision.

ensures all employees remain competent for the role they undertake by undertaking appropriate training or professional development

200.Paragraphs 35 and 42 CoP (CSPA and TBA) requires TSCPs to provide training and development specific to staff roles and responsibilities.

201.The BMA reviews ongoing adherence to this requirement in the course of its regular supervision.

The Regulator should require TCSPs to have procedures in place to control recruitment practices in regard to all individuals including Key Persons. The Regulator should require the TCSP to, prior to hiring an employee, give due consideration to an applicant’s:

criminal records; regulatory censure; professional reprimands; other formal censure, discipline or public criticism.

202.The assessors did not have any adverse findings in respect of this paragraph of the Standard.

Training and development

The Regulator should require that a TCSP establishes and implements policies and procedures that require its employees, including Key Persons, to undertake an annual programme of training and professional development

203. Paragraph 7 of the MCL under the First Schedule of the TBA sets out that generally the undertaking will carry on trust business with integrity and professional skills appropriate to the nature and scale of its activities.
204. The Authority clarifies its expectations on licensed undertakings regarding this criterion in the TBA SoP. Specifically, paragraph 54 states undertakings should provide adequate training for staff on an ongoing basis, and should ensure that the level of professional skills within the organisation are in compliance with Trust industry standards.
205. Similar provisions exist under the CSPA.
206. During the licensing review process, the Authority reviews the TCSP's policies and procedures that cover training and professional development of staff. The TCSP's documentation should outline the commitment to train staff as well as requiring its employees to undertake training and professional development.
207. During prudential meetings, discussions are held with Key Persons of a licensed undertaking pertaining to their training and development of staff. The Authority will review training logs to corroborate the types of training programs completed to ensure they are appropriate and relevant to the business and roles being fulfilled.

Observations relating to Part 3E of the Standard - Control over vehicles

Summary

- The BMA was able to demonstrate overall that the regulatory regime relating to this part of the Standard was largely compliant.
- The safeguarding of clients' assets is a key element of a compliant CSP regime and the assessors have recommended that the independent auditing of CSPs' affairs, including the reconciliation of client money positions, be introduced as part of bringing the Bermuda CSP regime into line with the Standard.

Professional duties

Regulators should require that TCSPs have adequate written policies and procedures to ensure the professional performance of their duties

208. TBA Code of Practice, paragraph 44, and CSPA Code of Practice, paragraph 37, requires TCSPs to ensure they have policies and procedures in place re their employees' professional duties.

209. The assessors viewed the full content of the 9 tabs of the annual data call, and were provided with an explanation as to how the information supplied by the Licensee was used by the BMA to assess and mitigate risk.

210. The volume and level of detail of material requested by the BMA from licensees, on a yearly basis, demonstrated a proactive approach to assessing compliance with this requirement of the Standard.

211. The assessors reviewed the list of material the licensee is required to submit prior to an onsite: this was regarded as sufficient to enable a focused onsite visit.

Regulators should ensure that in order to meet the requirements and obligations under the FATF Recommendations relating to money laundering and terrorist financing risk that in respect of any Vehicle which a TCSP may incorporate, create, administer, manage or provide services to, the TCSP:

documents, verifies and keeps updated the beneficial ownership of those Vehicles as a component of its policies, procedures and controls on a customer's due diligence

212. CDD, including identifying and verifying the beneficial owner, is a requirement under POCR Reg 6(1), which requires a Firm to apply CDD when:

- Establishing a business relationship;
- Carrying out an occasional transaction;
- Suspecting money laundering or terrorist financing; or
- Doubting the veracity or adequacy of documents, data or information previously obtained.

213. During onsite visits, a sample of client files are examined and beneficial ownership records are checked. The files confirmed that the BMA is conducting checks on UBOs and that where deficiencies are identified remediation is being sought.

knows the beneficial ownership of the source of funds being vested in those Vehicles

214. Under POCR Reg 6(1B) the CDD on legal persons and arrangements includes knowing the control and ownership of the vehicles.

215. This is quantified in Reg 5 of POCR as including: identifying where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is.

216. The assessors' verified that the requirements are tested during onsite visits and that source of funds forms part of that review.

has policies and procedures to ensure that full documentation is held evidencing the nature of business to be engaged in, as well as the powers of any Vehicle; and

217. This is required under POCR Reg 6(1B)(j). The assessors' view is that the BMA is technically compliant and that effectiveness is tested during onsite visits.

has policies and procedures to establish, access in a timely manner and retain documentation of beneficial ownership information for all Vehicles

218. POCR Reg 16(1)(c) requires firms to have policies and procedures on record keeping; and POCR Reg 15(1-3) requires a firm to retain and provide access to CDD, including beneficial ownership. The assessors' view is that the BMA is technically compliant and that effectiveness is tested during onsite visits.

Regulators should also require that TCSPs:

have a robust system in place to establish beneficial ownership⁷ information in accordance with the FATF Recommendations

219. POCR Reg 3 defines a beneficial owner as any individual who “as respects anybody other than a company whose securities are listed on an appointed stock exchange, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or as respects anybody corporate, otherwise exercises control over the management of the body.”

220. The assessors’ view is that the BMA is technically compliant and that effectiveness is tested during onsite visits.

document the rationale for the establishment of any Vehicle

221. No adverse findings on technical compliance or effectiveness were identified.

undertake a risk-based approach to the establishment of and monitoring of a complex structure and that they hold adequate, accurate and timely information on the rationale for its use

222. POCR Reg 7(2)(c) states that firms are required to “so far as practicable keeping the documents, data, and information obtained, for the purposes of applying customer due diligence measures up-to-date.”

223. Record-keeping is tested during onsite visits.

224. No adverse findings on technical compliance or effectiveness were identified.

undertake enhanced due diligence in respect of all high-risk Vehicles

225. POCR Reg 11(1) defines when a firm has to apply EDD. The assessors’ view is that the BMA is technically compliant and that effectiveness is tested during onsite visits.

undertake enhanced due diligence in respect of all Politically Exposed Person

226. POCR Reg 11(1) obligates a firm to conduct EDD re PEPs. The assessors’ view is that the BMA is technically compliant and that effectiveness is tested during onsite visits.

ensure there is adequate, accurate and current information on the ultimate beneficial ownership and control of Vehicles that can be obtained or accessed in a timely fashion by competent authorities; and

⁷ The Standard uses the FATF definition for beneficial owner, which refers to, “... the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.”

227. POCR Reg 16(1)(c) requires a firm to have record-keeping procedures in place; whilst POCR 15 requires that CDD and transactional records are retained that cover beneficial owners.

228. From evidence supplied it was apparent that the BMA responded positively to a significant number of requests for beneficial ownership information, from the BPS and FIA.

229. The assessors met with representatives of the Bermuda Police Service and the Financial Intelligence Agency. During these meetings neither agency highlighted any problems with obtaining beneficial ownership records via the BMA.

retain accurate evidence of all decisions made in the course of acting as a director or other controlling party of a Vehicle

230. Paragraph 37 of the TBA Code of Practice outlines the record-keeping requirements, which includes the minutes of all decisions taken by a trustee. Paragraph 30 of the CSPA Code of Practice is less specific regarding “all decisions.” This states that it would be expected that records kept would include minutes or records of decisions

231. The assessors’ view is that the BMA is technically compliant and effectiveness is tested during onsite visits.

The Regulator should require that TCSPs remain responsible for obtaining and documenting beneficial ownership information, even where reliance is placed on a third party⁸.

232. No adverse findings on compliance were identified.

Where TCSPs place reliance on third parties, the TCSP should ensure that contractual agreements with all third parties are sufficiently robust to ensure that they can fulfil the requirements set out above

233. This is covered under the General Guidance Notes for AML/ATF which refer to determining how much reliance is placed on a third party; and consent from said third party to reliance being placed upon them. Section 5.128 also states that a firm relying upon third parties must satisfy themselves that the third party consents to being relied upon. This consent should be in writing, and must confirm that on request the firm will make available copies of CDD

Where TCSPs rely on third parties, the Regulator should require TCSPs to test the ability of all third parties to provide adequate beneficial ownership information upon request by the TCSP and without delay, which should also be supported by a contractual agreement

234. The assessors have no adverse findings in respect of technical compliance or effectiveness.

⁸ FATF Recommendation 17 permits the reliance on third parties

In cases where a TCSP cannot obtain beneficial ownership information from a third party, the Regulator should require such relationships should be terminated

235. The assessors have no adverse findings in respect of technical compliance or effectiveness.

Vehicle assets

The Regulator should require TCSPs to establish and document clear policies and procedures that ensure:

they act with professional skill care and diligence with regard to the administration of Vehicle assets

Paragraph 7 of the MCL re the TBA requires a licensed firm to conduct their business with the professional skills appropriate to the nature and scale of their activities. Paragraph 14 of the TBA Code of Practice requires a licensed firm should always act with due care, skill and diligence.

236. In view also of the licensing requirements of the MCL and the CSPA Code of Practice the assessors are satisfied that compliance is achieved.

there is a segregation of Vehicle assets from those of the TCSP; and

237. Section 47A of TBA requires client funds to be segregated from the TSPs own funds.

238. Section 55B of the CSPA requires client funds to be segregated from the CSPs own funds.

239. No adverse findings on technical compliance or effectiveness were identified.

there is a recording and monitoring of any receipt or movement of assets of a Vehicle administered by a TCSP

240. Paragraph 23 of the TBA Code of Practice requires records to be available at all times to show monies received, held or paid on behalf of clients by the TSP. The Code requires records to be available at all times to show monies received, held or paid on behalf of clients by the CSP, and requires TCSPs to retain documents relating to a transaction from five years beginning on the date the transaction is completed.

241. No adverse findings on technical compliance or effectiveness were identified.

Client money rules

The Regulator should put in place rules for the administering of and holding of Client monies which at a minimum address:

segregation of the Client monies from the monies of the TCSP

242.Paragraph 22 of the TBA Code of Practice details that documentation should be provided as appropriate setting out the terms on which money is held. Paragraph 40 of the CSPA Code of Practice also details that documentation must be provided to the client, setting out the terms on which money is held.

243.The Assessor’s view is that the BMA is technically compliant and effectiveness is tested during onsite visits. Where entities have failed, remediation is put in place.

the requirement to hold Client monies in clearly separate and distinct accounts from any accounts of the TCSP’s own monies

244.No adverse findings on technical compliance or effectiveness.

the disclosure to Clients of the terms upon which Client money is held

Paragraph 22 of the TBA Code of Practice details that documentation should be provided as appropriate setting out the terms on which money is held. The CSPA Code of Practice also details that documentation must be provided to the client, setting out the terms on which money is held.

245.This is tested during onsite visits and the assessors consider the BMA to be compliant.

the requirement for Client money accounts to be reconciled promptly by the TCSP

246.Paragraph 22 of the TBA Code of Practice details that documentation should be provided as appropriate setting out the terms on which money is held. Paragraph 40 of the CSPA Code of Practice also details that documentation must be provided to the client, setting out the terms on which money is held.

247.No adverse findings on compliance were identified.

to be subject to a dual signature regime; and

248.The TBA and CSPA Codes require that any remittance of client money adheres to a suitable procedure to prevent the misuse of client funds. The TBA and CSPA Codes do not expressly specify a requirement for a dual signature regime and thus the BMA does not comply with this part of the Standard. However, pursuant to the Codes, 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.

249.It is the assessors’ view that to be in full compliance with the Standard the BMA would need to amend its requirement to provide for a “four eyes” sign-off. All licensed businesses have to be operated in a prudent manner and have appropriate controls, and sanctions by

the regulator can always be applied, so these in themselves are not direct replacements for a dual signature regime – which the authors of the Standard clearly felt should be the benchmark.

the establishment of policies, procedures and controls to prevent the inappropriate use of Client monies for the settlement of TCSP fees and disbursements

250. The TBA and CSPA Codes require that where client money is used to pay the TSP's own fees, such transfers would only be made in accordance with the client agreement in place.

251. No adverse findings on technical compliance or effectiveness were identified.

The Regulator should require a TCSP to implement an independent, competent, appropriately qualified, review of the controls over Client money, on a risk based approach

252. CSPs are not required by regulation to commission an independent review of controls over client money, and therefore the BMA does not comply with this section of the Standard.

253. The BMA notes that it has implemented a comprehensive onsite programme for TCSPs. This includes the development and execution of a robust testing programme to assess compliance with the client money requirements of the Codes. It believes that its onsite review programme coupled with periodic requirements for independent review using its power to obtain information and reports achieve the intended outcome of this paragraph of the Standards.

254. It is the assessors' view that, notwithstanding the BMA's own programme, an independent audit of a CSP's affairs, incorporating a review of controls over and reconciliation of client monies, is required in order to achieve compliance with the Standard.

Observations relating to Part 3F of the Standard - Conduct

Summary

- The BMA is regarded as compliant, technically and with effectiveness
- The Authority expects TCSPs have a full understanding of their duties arising under the law relevant to the administration and affairs of clients for which they are acting and in which they are carrying on business and in which the assets being managed are held.
- Conflicts of interest are effectively addressed

Integrity

The Regulator should require that a TCSP acts with integrity and fair dealing in the conduct of its business

255. The BMA's self-assessment and the assessors' findings did not indicate any departures from this paragraph of the Standard. The BMA is viewed as technically compliant and effective.

Conflicts of interest

The Regulator should require that a TCSP's policies and procedures reflect its duty to Clients over the referrers of those Clients and maintain the highest standards of ethical behaviour in order to avoid conflicts of interest so as to always act in the best interests of the Client

256. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulator should require that a TCSP has clearly established policies and documented procedures to either avoid any conflict of interest arising or, where a conflict arises, to keep adequate records of such conflicts and ensure fair treatment to its Clients by disclosure of the conflict, internal rules of confidentiality, declining to act, or otherwise

257. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Interaction with clients

The Regulator should require that TCSPs adopt and maintain prudent standards in its interactions with Clients, and further require that, inter alia, a TCSP should:

ensure that, where appropriate, there is a full understanding of the duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the

jurisdictions in which they are carrying on business and in which the assets being managed are held

258. The BMA's self-assessment and the assessors' findings did not indicate any departures from this paragraph of the Standard. The BMA is viewed as technically compliant and effective.

ensure that all decisions taken or transactions entered into by or on behalf of Clients are actioned in a timely manner appropriately authorised and handled by persons with an appropriate level of knowledge, experience and status

259. The assessors have no adverse findings in terms of technical compliance or effectiveness.

ensure that all reasonable steps are taken to ensure that it obtains sufficient information about the Client in order to exercise a relevant discretion or other power in a proper manner and that such discretion or power is only exercised for a proper purpose

inform the Client in writing of the agreed terms between the CSP and the Client, including the instructions received and the capacity and scope of discretion, if any, within which the CSP will act for the Client; and

establish and maintain policies, procedures and controls to monitor and ensure it always has the requisite capacity and resources to provide the services agreed with its Clients

260. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Advertising and communication

The Regulator should require that a TCSP adopts advertising and communication practices that: do not violate local and international laws; do not violate standards of prudence and fairness; are clear and ethical; do not contain any element that is in breach of laws or promotes the breach of other legislation; as far as possible, do not place the jurisdiction at risk of being brought into disrepute.

261. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Terms of business

The Regulator should require a TCSP to enter into written terms of business with Clients for whom the TCSP has agreed to act. The terms should provide: a description of the services to be provided; the fees to be charged and the basis of the calculation of those fees; any exit fee and the basis upon which it is calculated; the means by which complaints about the TCSP's services can be made;

262. The Trust business, does not have a service agreement, but utilises the Trust Deed, which contains the terms of services.

263. The CSPA CoP (paragraph 44) requires licensed undertakings to include a clear description of service to be provided in the client agreement.

264. Paragraph 43 of the CSPA CoP notes licenced corporate service provider must agree a clear fee structure with each relevant person on behalf of the client in advance of taking on an appointment, and ensure that the fees charged are transparent at all times. Licenced corporate service providers should also ensure that adequate notice is given before any material change in the fee structure is introduced.

265. As part of the MCL, during the licensing review the Authority requires all applicants to provide terms of business, client and service agreements (covering all services provided), and schedule of fees charged (for each type of service offered). The documents provided will be reviewed, and crossed referenced against the business plan and the activities selected on the application form to ensure they align.

the Regulator should require that a TCSP's written terms of business provide that termination of a relationship be on reasonable notice, unless a good reason can be given

266. This is governed by the trust formation documents outlining how trustees can be removed, as well as the Trustee Act 1975. The CSPA includes provisions for how an agreement can be terminated, including provisions for a reasonable notice period.

267. During the licensing review process, the Authority will review the TCSP's written terms of business, which should include provisions and disclosures on the termination of services and under what conditions.

Complaints handling

The Regulator should require that a TCSP:

has an effective documented complaints handling mechanism which is fair and timely

268. TCSP licenceholders must ensure their complaints handling processes are transparent. When complaints are made, a licenced undertaking must 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.

269. At prudential meetings, the Authority will ask specific questions regarding the complaints handling process. The complaints log will be reviewed to identify any trends or significant concerns regarding the business operations raised by clients.

provides advice to Clients about the TCSP's complaints handling mechanism; and

270. The TBA and CSPA requires licensed undertakings to have in place a complaints handling process that ensures that the clients complaints are properly acknowledged, handled and resolved on a timely basis.

271. At the time of licensing, the applicant must provide a copy of its complaint handling procedures, which should detail the process for a client to lodge a complaint, and the internal process for processing that complaint. This is reviewed in addition to the information captured on the TCSP's complaints log. If the document is found deficient, amendments will be recommended to the applicant which must be put in place prior to licensing.

272. The BMA is viewed as technically and effectively compliant.

maintains a log of all complaints and their current status

273. The TBA and CSPA require 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.

274. During the licensing review the applicant must provide a sample complaints log for review. Complaints logs, at a minimum, should capture the date of the complaint was filed, details of the complaint, individual responsible for handling the complaint, current status of the complaint, how the complaint was addressed and the closure date of the complaint.

275. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Observations relating to Part 3G of the Standard - Prudential

Summary

- **The BMA is compliant in respect of TSPs but only partly compliant with this section of the Standard for CSPs**
- **In summary key recommendations from the assessors to comply with the Standard are:**

A minimum capital and liquidity regime should be introduced for CSPs

CSPs should be required to prepare audited financial statements

There should be a formal requirement for licensed entities to submit an auditor's management letter to the Authority

The BMA's power to petition for a winding-up should not be limited to circumstances where a licence has been revoked.

Insolvency practitioners should be licensed

Capital and liquidity requirements of a TCSP

The Regulator should undertake an analysis of the capital and liquidity of a TCSP, based on an analysis of financial information

276. The TBA requires a trust business to maintain adequate liquidity, having regard to the relationship between its assets and its actual and contingent liabilities, the timing of when liabilities fall due and assets mature, and any other factors deemed relevant by the BMA.

277. An analysis of a licensed TSP's capital and liquidity reports is performed on a quarterly basis by the BMA. It reviews the quarterly filings to determine that a TSP's capital and liquidity reports have been calculated correctly, and that it has met the minimum requirement.

278. However in a significant departure from the Standard there are currently no minimum capital or liquidity requirements applied to CSPs. The Authority does review board meetings minutes, board packs and financial statements of CSPs during on-site reviews to assess the financial position and performance of the company, but there is no formal requirement against which to assess the adequacy of financial resources and liquidity of a CSP and if necessary require remediation.

The Regulator should implement regulatory capital and liquidity requirements that:

set out minimum standards of net assets and liquidity that TCSPs must maintain, so as to reduce the risk of financial failure

279. Trust companies are not regarded as running their businesses in a prudent manner unless they maintain net assets of \$250,000 (\$25,000 in all other cases). TSPs are required to report their capital position and maintain adequate liquidity – see paragraphs 276 and 277 above.

280. There are no minimum standards of net assets and liquidity set down for CSPs. The assessors recommend this should be addressed.

set out minimum standards of surplus liquid assets to be retained in the business, sufficient to meet the TCSP's expenditure for a specific period in the event of the need to have an orderly wind up of the TCSP; and

281. Adequate liquidity for trust businesses is addressed in paragraphs 46-49 of the Trust SoP. A TSP 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 such licenced undertakings to maintain minimum liquidity which is equivalent at all times to at least three months' expenditure.

282. The BMA has not set out minimum standards of surplus liquid assets to be retained in the business, sufficient to meet a CSP's expenditure for a specific period in the event of the need to have an orderly wind up of the CSP.

require TCSPs to notify the Regulator when they fall below the minimum capital and/or liquidity requirements established by the Regulator

283. Compliance with this requirement is met for TSPs but not CSPs.

The Regulator should:

consider whether to apply restrictions on what assets may be included in regulatory capital and liquidity requirements

284. The SoP, paragraphs 47-49, specifies what assets the Authority considers as liquid. Paragraph 40 of the SoP also states that in assessing the capital adequacy of a licenced undertaking, all claims on other members of the group will be deducted.

285. Compliance with this requirement is met for TSPs but not CSPs.

take into account any deductible and claims payable for any insurance policies in force.

286. A TSP is required to have in place insurance for an amount commensurate with the nature and scale of its operations.

287. Paragraph 53 of the TBA CoP licenced undertakings should also be proactive in alerting the Authority to any significant developments relevant to its business which include any material insurance claims for damages arising from acts, omissions or breaches of professional duty; or issues affecting its ability to meet or continue meeting the minimum licensing criteria or other breaches of expected standards of behaviour.

288. Compliance with this requirement is met for TSPs but not CSPs.

support prudential regulation by allowing peer group comparison; and

289. Peer group analysis is part of the BMA's review of the periodic information submitted by licensed entities such as quarterly financial statements and liquidity return submitted by trust companies. It is used to identify entities that may be outliers amongst their peers and identify entities that may warrant further review (for example, targeted onsite review or prudential meeting). This information is used to update the BMA's risk assessment model and assist the Authority's onsite team in designing the onsite procedures and review scope applicable to a specific licensee. The risk assessment tool takes into consideration the quality of an undertaking's capital and liquidity position.

define a mechanism for intervention, including triggers, where a TCSP is at risk of falling below acceptable minimums

290. Compliance with this requirement is met for TSPs but not CSPs.

The Regulator may choose exceptionally to grant a modification to the capital and liquidity requirement to reflect particular circumstances. Where a modification is granted, the Regulator may apply additional requirements to compensate for any increased risk

291. The Authority's annual variance report enables identifying trends in the financial condition of a licensed undertaking, and to flag entities who may be at risk of breaching their minimum capital and liquidity requirements. For example, entities that have had consistent downward trends in capital and liquidity amounts would be escalated to the BMA's management team to determine the course of action. The Authority can increase the minimum net asset amount, if required.

Maintenance of adequate accounting and other records of a TCSP

The Regulator should require a TCSP to produce and retain financial records that accurately reflect its affairs. Such records must be available to the Regulator immediately upon request

292. TSPs must prepare annual accounts, and a licensed entity which is a company must provide audited financial statements to the Authority within 4 months of the end of each financial year.

293. The CSPA (Schedule 1 - paragraph 3(3)) requires that the licensee must maintain adequate accounting and other records in order to be considered to be conducting business in a prudent manner.

294. The Code (paragraph 31) requires the corporate service provider's own accounting records to be accurate, current and up to date to reflect its affairs, and should be available in a timely fashion, upon request by the Authority.

295. Additionally, section 47 of the Corporate Service Provider Business Act 2012 provides the power to obtain information and reports by the Authority by notice.

Regulators should implement rules wherein a TCSP should retain sufficient accounting and financial data with regard to any financial transaction in which it played a part, to ensure the preservation of an audit trail for a minimum period of five years

296. Both the TBA and CSPA require licensees to maintain records of account in line with the laws applicable to each client's structure as well as for the licensee itself in accordance with the laws applicable to it 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.

297. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Regulators should implement controls to require a TCSP to maintain accounting records in a manner that is accessible and promotes inspection by the Regulator

298. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Requirement to have accounts audited

The Regulator should require a TCSP to produce financial statements, in line with the accounting standards applicable in its home jurisdiction, and to have them audited

A time limit for the provision of audited financial statements to the Regulator should be enforced

299. A trust business is required to prepare annual accounts, and a licensed undertaking which is a company must provide audited financial statements to the Authority within 4 months of the end of each financial year. Pursuant to section 44 of the TBA, financial statements must be audited by an approved auditor.

300. In respect of TSPs, a log is prepared to track the filing due dates for quarterly accounts and annual audited financial statements, and the dates when such documents are received from licensees. If a breach is not addressed appropriately, the matter will be escalated within the Authority. This could have an impact on the licensee's risk profile. The licensee would be required to include the breach in the certificate of compliance for the relevant period.

301. CSPs are not required to produce audited financial statements.

A copy of the Auditor's management letter and the management response should be presented to the Regulator

302. There is a technical departure from this paragraph of the Standard as there is no requirement for a copy of the Auditor's management letter and the management response to be presented to the Regulator. Rather, the Authority obtains and reviews auditors' management letters during all onsite visits and the results will influence the scope of the onsite examination.

303. In partial mitigation the TSP is expected to deal openly and alert the Authority of significant developments including in respect of the contents of management letters.

304. CSPs are not required to be audited.

A TCSP should be required to notify the Regulator on a timely basis of any decision by its Auditor to qualify its audit report or to raise an emphasis of matter

305. There is a departure from this paragraph of the Standard as there is no specific requirement for a TSP to notify the BMA of a decision by its Auditor to qualify its audit report. However the prospect of an audit qualification of a TSP's accounts is something about which there is a clear understanding that it would inform the BMA in advance.

306. CSPs are not required to appoint an auditor.

The Regulator should require the Auditor to be suitably qualified to undertake the audit

307. For TSPs, the assessors have no adverse findings in terms of technical compliance or effectiveness. CSPs are not required to appoint an auditor.

The Regulator should be empowered to refuse a proposed Auditor and to remove Auditors

308. Pursuant to section 44 of the TBA, every licensed undertaking which is a company shall appoint annually an approved auditor to audit financial statements of the undertaking. If a TSP fails to appoint an approved auditor under subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor.

309. However the assessors note that there is a departure from the Standard as BMA is not empowered to remove Auditors. Meanwhile the CSP regime does not require an auditor to be appointed.

The Regulatory framework should include provisions for gateways between the Regulator and the Auditor. These should include an obligation for the Auditor to report to the Regulator on significant breaches of regulatory requirements by the TCSP, and protection from civil liability for an Auditor in respect of any such information supplied to the Regulator

310. Pursuant to section 45 of the TBA, the auditor (of a licensed undertaking which is a company) or the accountant (of a licensed undertaking which is not a company) is required to give notice on certain material matters to the Authority. These matters are outlined in the Trusts (Regulation of Trust Business) (Reporting Accountants) (Facts and Matters of Material Significance) Regulations 2006.

311. Pursuant to the BMA Act section 33A, no auditor is in breach of any duty in communicating in good faith to the Authority, whether in response to a request or not, any information or opinion gained in his capacity as an auditor of a licensed undertaking.

312. The assessors have no adverse findings in terms of technical compliance or effectiveness in respect of the regime for trusts, while that for CSPs is not covered.

The Regulatory framework should enable the Regulator to require copies of financial records, including audited financial statements of parent and ultimate parents entities, particularly where the TCSP is dependent on support from its parent or group, or otherwise has significant financial exposure to the parent or group

313. Licence applicants are required to provide the audited accounts for the Controller (and, where appropriate, audited group accounts for the controller's group) for the last three financial years (if available). The Authority reviews the Controller's accounts to assess, at a high level, the financial condition of the entity. Items of interest include the audit opinion (i.e. unqualified, qualified, emphasis of matter, etc.), net asset balances, claims and liabilities, sources of income, and any significant matters disclosed in the notes to the financial statements

314. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Insurance

The Regulator should require a TCSP to maintain Professional Indemnity Insurance ("PII") cover which is commensurate with the size and nature of its business

315. The assessors have no adverse findings in terms of technical compliance or effectiveness.

The Regulator should require notification to itself and insurers concerned of any material potential claim on a timely basis

316. The TSP and CSP regimes both require businesses to be proactive in alerting the Authority to any significant developments relevant to its business, such as any material insurance claims for damages arising from acts, omissions or breaches of professional duties.

317. TCSPs are required to notify the Authority promptly of any material developments that can impact their business operations.

318. The types of notifications the Authority would expect to receive include such topics as cyber security breaches, errors, and lawsuits, which may have an insurance impact. The Authority will review all notifications and, if warranted, will request additional background information on the incident.

319. The Authority expects the TCSP to provide a written report to ensure that it is an isolated incident. The results of any ongoing claims on a TCSP are monitored, and the details reviewed. The Authority's legislation does not require TCSPs to advise insurers concerned of any potential claim in a timely manner. The expectation is any communication requirements between the TCSP and insurer would be addressed in their contract.

The Regulator should give consideration to imposing requirements for the TCSP to have in place run-off PII where a licence is surrendered or revoked

320. Whilst there is no explicit requirement in either the TBA or the CSPA for a TCSP to have run-off PII in these circumstances, there are powers within the TBA and CSPA available to the Authority to ensure adequate protections are in place to protect the interest of the TCSP's clients at all times.

Liquidations and receiverships

The Regulator should have the power to apply to the Court to appoint a Manager, Administrator, Receiver or Liquidator ("insolvency practitioner") to a TCSP

321. A compulsory liquidation in Bermuda would be conducted under the supervision of the Court. Under the legislation the Authority has the power to present a petition to the Court for the compulsory liquidation of a TCSP, where the licence has been revoked and in such circumstances where it is just and equitable in the opinion of the Court to wind up the company. This power is not restricted solely to insolvent firms.

322. These winding up provisions also empower the BMA to seek the appointment of a provisional liquidator (including on an ex parte basis) to act as a receiver/manager/administrator.

323. However the Standard is not fully met as BMA's power to petition the Court to wind up an undertaking which is a company is limited to an undertaking whose licence is revoked.

The regulatory framework should establish whether insolvency practitioners: are required to be licensed; are subject to rules or regulations of the Regulator; are subject to other regulatory powers; and can be required to submit reports to the Regulator

324. There is no requirement in Bermuda for insolvency practitioners to be licensed, which is a departure from the Standard. The Supreme Court must be satisfied that the person to be appointed as a liquidator has the requisite knowledge, skills and experience when determining whether to issue an Order of the Court appointing such liquidator.

Observations relating to Part 3H of the Standard - Administration

Summary

- **The BMA is largely compliant with this Part of the Standard.**
- **At the time of the virtual onsite discussions, important legislation in the form of the Personal Information Protection Act 2016 was not yet fully in operation. This has meant that compliance was not achieved in the areas of data security and data protection at the time of the evaluation.**

Record keeping requirements

The Regulator should ensure that it has the statutory power to access the records of a TCSP, and to take copies of such records to undertake its regulatory functions

The Regulator should require that TCSPs have in place robust record keeping policies and procedures that deliver effective information and document management systems. The Regulator should require that a TCSP:

maintains all records so that they are accessible and up-to-date at all times as far as is reasonable

arranges files and indexes all records so as to permit prompt access to any particular record

records information in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the TCSP, in particular in such manner as to enable early identification of balances and of the particular items which make up those balances

ensures any records it maintains in an electronic format are stored in such a way as to be and remain admissible in evidence before a relevant Court

maintains adequate policies and procedures for the maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the TCSP and/or its Clients or others so that they are admissible before a relevant Court and reasonably safeguarded against loss, unauthorised access, alteration or destruction; and

maintains adequate records identifying relevant financial transactions following the closing of an account, the end of a transaction or the cessation of the business relationship for a minimum period of five years from the last of these events; or for as long as the law requires

325. The assessors have no adverse findings in terms of technical compliance or effectiveness.

Accounting requirements for vehicles administered by TCSPs

Regulators should require that a TCSP with responsibility for maintaining accounting records of a Vehicle does so with sufficient particularity to show and explain the transactions and commitments (whether effected on its own behalf or on behalf of others)

326. The relevant CoPs require that “client accounting records should disclose with accuracy the transactions and commitments” of the structures under administration.

Outsourcing of key functions

The Regulator should define the functions of a TCSP which should not be outsourced, giving careful consideration to ensure that a TCSP does not delegate so many of its functions as would leave an inadequate presence in the jurisdiction

327. Paragraph 35 of the TBA SoP and paragraph 36 of the CSPA SoP assert that the Authority takes into account a range of other considerations in assessing whether an undertaking is prudently run. These include the undertaking’s procedures for overseeing, managing and monitoring all outsourced activities.

328. The Authority does not define which functions may not be outsourced but all material outsourcings do require either prior approval from the Authority or a CEO attestation that the arrangements are substantive.

329. During the licence review process, the Authority reviews copies of outsourcing agreements, policies and procedures to ensure that the outsourced activities are not such that the licensed undertaking would be left having an inadequate presence, and to ensure that the licenceholder at all times has oversight controls in place for outsourced activities. This review process by the Authority continues under the ongoing prudential regime.

330. The assessors are of the view that there is a technical gap as the BMA has not defined the functions of a TCSP which should not be outsourced. However it is evident that all material outsourcings do require approval and regulatory oversight.

Outsourcing must not hamper supervision of a TCSP by the Regulator. The terms of the outsourcing agreement must include a contractual requirement for the provider of the outsourcing services to give the Regulator the right to direct access to material which it holds in relation to the business of a TCSP⁹.

331. The assessors have no adverse findings in respect of technical compliance or effectiveness.

In any instance of proposed outsourcing, the Regulator should require a TCSP to:

⁹ This should generally include the power to conduct an onsite visit

assess the risk of the proposal

document the capability and suitability of the proposed provider of the outsourced services

establish a clear responsibility within the TCSP for monitoring the conduct of the outsourced services, and for reporting to the Board

consider the risks which could arise from the failure of the provider of outsourced services or other breakdown in the provision of services; and

have in place a contingency plan in case of the failure of the provider of outsourced services or other breakdown in the provision of services

332. The assessors have no adverse findings in respect of technical compliance or effectiveness.

The Regulator should require that:

a TCSP notify it before outsourcing functions which are relevant to its management, compliance or the delivery of TCSP services

333. The Authority requires TCSPs to notify and gain approval for new 'material' outsourcings.

A 'material' outsourcing is defined in the Outsourcing Guidance as: "an outsourcing arrangement where a critical activity as determined by senior management of the licensed entity has been outsourced to a third party." The Outsourcing Guidance goes on to define critical activity as one where, a defect or failure in the provision or performance of that activity would materially impact the RLE. For example:

- Business operations, reputation or financial performance
- Ability to manage risk
- Compliance with laws and regulations

334. During the licence review process, the Authority reviews an undertaking's outsourcing agreements, policies and procedures to ensure they align with the requirements under the respective Act, Code of Practice, and Statement of Principles.

335. As part of the review under the Outsourcing Guidance, RLEs are required to provide prior-notification for new material outsourcings. The Authority reviews the undertakings' submissions to ensure that all requirements have been met before issuing a no-objection letter.

there is an outsourcing agreement in writing between a TCSP and the provider of the outsourcing services

336. The assessors did not identify any technical or effectiveness gaps against this paragraph of the Standard.

if the outsourcing is of a regulated activity, then the provider of the outsourcing services should normally itself be regulated; and

337. The assessors did not identify any technical or effectiveness gaps against this paragraph of the Standard

there is no sub-outsourcing without the explicit approval of the Regulator

338. Sub-contracting, sub-outsourcing and chain outsourcing are covered within the Outsourcing Guidance Paragraph 17. If the outsourcing agreement allows the service provider to sub-contract any outsourced activities, then any subcontractor should be subject to the same level of due diligence by the TCSP as the primary service provider. Additionally, any sub-contractor should be required to adhere to all aspects of the outsourcing agreement and the TCSP should approve in writing any changes to existing sub-contracting arrangements before they commence.

The Regulator should require a TCSP which maintains its accounting records of Vehicles and other records with a provider of outsourced services (whether or not in a location outside the jurisdiction), to ensure that:

the records are kept secure and pose no operational risk; the records are maintained so as to be readily accessible; all regulatory and confidentiality laws are complied with; and the Regulator has ready and reasonable access to the records at all times

339. Paragraph 22 of the Outsourcing Guidance notes the due diligence on the service provider should include assessing that it has appropriate information and data security to protect any and all confidential information relating to the TCSP and its clients. Separately, paragraph 22 also requires an assessment of whether the service provider has the relevant technology, cyber security, operational infrastructure and financial capacity to undertake the outsourcing

340. Paragraph 24 of the Outsourcing Guidance also requires that the outsourcing agreement impose an obligation on the service provider to comply with all relevant data protection and data privacy rules and regulations. Furthermore, appropriate risk management standards and internal controls must be imposed.

341. During the licence review process, the Authority reviews an undertaking's outsourcing agreements, policies and procedures to determine if the outsourcing activities include the maintenance of its accounting records and other records with a provider of outsourced services, including the location of the service provider.

342. The assessors have no adverse findings in respect of technical compliance or effectiveness.

Data security

The Regulator should require that data (whether in a physical or digital format) is held in a secure manner. This should include reasonable steps to ensure:

security against theft or unauthorised access; security against loss or destruction; compliance with the statutory requirements which apply to the TCSP; and suitable backup and disaster recovery arrangements

343. The Personal Information Protection Act 2016 (“PIPA”) was passed in 2016 and is partially in force. PIPA contains specific and direct requirements that meet the requirements of this paragraph of the Standard: however, the BMA has not yet been advised of a date when these provisions will come into operation.

344. Paragraph 39 of the TBA Code of Practice and paragraph 32 of the CSP Code of Practice require that “in order to protect all records from the risk of loss, theft, unauthorised access, alteration or destruction a licensed 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; and
- d) timely accessibility in Bermuda of any records it maintains in hard copy or electronic format.”

345. This is effectively reviewed in the course of ongoing supervision

Data protection

The data protection principles framework for holding data about individuals varies slightly between jurisdictions, but the principles can be summarised as below. Personal data must be:

used fairly and lawfully; used for specific and lawful purposes, in a manner that is compatible with those purposes; adequate, relevant and not excessive; accurate and where necessary kept up to date; kept for no longer than necessary; used in accordance with the rights of individuals; and kept secure to avoid unauthorised or unlawful use, accidental loss, or damage

Regulators should require a TCSP to follow the above data protection principles and to:

not transfer data to another jurisdiction unless that jurisdiction subscribes to the above principles or an agreement exists between the TCSP and transferee providing an equivalent

level of protection; document the capability and suitability of the proposed provider of outsourced services; establish a clear responsibility within the TCSP for monitoring the conduct of the outsourced services, and for reporting to the Board; consider the risks which could arise from the failure of the provider of outsourced services or other breakdown in the provision of services; and have in place a contingency plan in case of the failure of the provider of outsourced services or other breakdown in the provision of services

346. PIPA, which contains provisions to meet these requirements of the Standard, was not fully in force at the time of the evaluation. In the meantime the Privacy Commissioner has, pursuant to his powers under s.29(1)(i), in March 2021 issued Guidance on vendors, third parties, and overseas data transfers. In addition, the Privacy Commissioner has recognised the Asia Pacific Economic Cooperation (APEC) Cross Border Privacy Rules (CBPR) System as a certification mechanism for transfers of personal information to an overseas third party.

347. However the Guidance issued by the Privacy Commissioner in March 2021 (and the recognition of the APEC CBPR System) were not in force as at the date of the assessors' virtual visit in December 2020.

348. As regards to contingency planning, paragraph 6 of the 2019 Outsourcing Guidance requires the TCSP to advise the Authority in its prior approval submission of what its contingency plan is in case of failure: if the contingency plan is to bring the activity back within the TCSP, has this plan been tested, or if the contingency plan is not to bring the activity in-house, the TCSP is to provide details of what its plan would be, including whether or not this plan has been tested since the outsourcing arrangements were put in place.

Observations relating to Part 3I of the Standard - Financial Crime and International Sanctions

Summary

- **The BMA was able to demonstrate that its regime is compliant with this Part.**
- **The recent CFATF evaluation covered the key elements of AML/CFT practice and, in general reported favourably with some aspects of effectiveness still in progress.**
- **Enforcement powers were comprehensive but it is recommended that more use is made of them in deserving cases.**
- **The International sanctions regime was felt to be effective.**

The Regulator should require TCSPs to have policies, procedures and controls to ensure that their business is protected from the threats of money laundering, the financing of terrorism and other financial crime.

Regulators should require TCSPs to have policies, procedures and controls to ensure that they and entities that they control and administer do not become engaged directly or indirectly in bribery, corruption or other crimes.

349. A CFATF mutual evaluation report on Bermuda was published in January 2020.

350. The CFATF report indicated that there had been significant improvement in the country's technical compliance status since the previous evaluation, with the main strengths of technical compliance lying "in the understanding of ML and TF risks at national and institutional levels, national cooperation and coordination, customer due diligence, record keeping, internal controls, legal persons and arrangements, criminalisation of ML and TF and the responsibilities of law enforcement and investigative authorities."

AML/CFT Policies

The Regulator should require that TCSPs assess risks and apply a risk-based approach to discharging their AML/CFT obligations.

351. The Authority published a report on Bermuda's national risk assessment on its website and performed explicit outreach to financial institutions in May 2018. The Authority expects TCSPs to take Bermuda's ML/TF risks and NRA results into account when preparing their own AML/ATF business risk assessment.

352. The Authority has put in place a risk-based AML/ATF supervisory framework that covers all TCSPs. Part of this supervision includes assessing compliance with the POCA SEA and ensuring that the RFIs have enacted policies, procedures and controls that cover risk mitigation mechanisms and the application of enhanced measures where the risk assessments identify a higher risk.

The regulator should require TCSPs to:

identify, assess, and understand the money laundering and terrorist financing risks for their jurisdiction and the TCSP sector, and apply resources aimed at ensuring those risks are mitigated effectively;

353. POCR Reg 16(1) requires TCSPs to undertake a business risk assessment that addresses the institution's inherent ML/TF risks, controls and residual risks as well as the results of the National Risk Assessment. Also under 16(1) TCSPs are required to have a Customer Risk Assessment that risk rates its Customers based on four ML/TF risk parameters and keep that CRA up-to-date on an ongoing basis

354. Regulation 16(5) requires TCSPs to take reasonable steps to identify, assess and understand their ML/TF risks. Reg 11 requires TCSPs to apply enhanced due diligence where ML/TF risks are higher.

355. The assessors' view is that the BMA is technically compliant and effectiveness is tested during onsite visits.

identify, assess and document a ML/FT risk assessment relevant to their business, based on their business plans and risk profiles (for example, customer base, markets, distribution channels and products and services offered)

356. The assessors' view is that the BMA is technically compliant and effectiveness is tested during onsite visits.

ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified; and

357. The assessors' view is that the BMA is technically compliant and effectiveness is tested during onsite visits.

implement a suitable AML/CFT programme with effective oversight over the Vehicles for which they act. The programme should include the implementation of adequate controls to mitigate any identified money laundering and terrorist financing risks

358. POCR reg 16(1)(d) requires TCSPs to have risk-based policies and procedures with the requisite internal controls in place.

359. POCR reg 18A requires that a Compliance Officer must oversee the AML/ATF programme. This also includes the requirement for continuous compliance.

360. The AML/ATF Supervision team tests this area during onsite visits. This team has been in place since 2009. Average compliance rate for CSPs in this area is 71%.

361. The assessors' view is that the BMA is technically compliant and effectiveness is tested during onsite visits.

National co-operation and co-ordination

The Regulator should ensure that it has legal authority and effective mechanisms in place which enable it to co-operate, and, where appropriate, coordinate domestically with policymakers, the Financial Investigation Agency (FIA), law enforcement Authorities, Regulators and other relevant competent Authorities concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction

362. Section 3(4-6) of POCR gives the BMA the legal authority to cooperate, and where appropriate, coordinate with other competent authorities on AML and ATF matters.

363. Section 49(1)(a) of POCA, 1997, established the National Anti-Money Laundering Committee, of which the BMA is a member.

364. The assessors met with representatives from the Attorney General's Chambers, BPS, FIA and relevant persons from the BMA. From these meetings it was evident that relationships and co-operation were good, as was the understanding of AML/CFT risk in Bermuda.

Regulation and supervision

The Regulator should ensure that TCSPs are subject to regulation and supervision and have policies, procedures and controls which effectively implement the FATF Recommendations by undertaking onsite inspections. The Regulator should:

require that TCSPs be licensed or registered and adequately regulated, and subject to supervision or monitoring for AML/CFT purposes, having regard to the risk of money laundering

or terrorist financing in the trust company business sector. This requirement is in addition to the requirement for the TCSP to be licensed to conduct trust and company business as provided for in Section A

have adequate powers to supervise or monitor, and ensure compliance by, TCSPs with regard to combatting money laundering and terrorist financing;

require that TCSPs provide an explanation of any recorded information or state where it may be found;

verify the TCSPs' compliance with AML/CFT requirements by undertaking regular onsite inspections;

be authorised to compel production of any information from TCSPs that is relevant to monitoring such compliance

365. The assessors' view is that the BMA is technically compliant and that effectiveness is tested during onsite meetings and prudential meetings.

have the legal powers and internal procedures to impose sanctions on TCSPs for failing to comply with the AML/CFT regulatory framework established by the Regulator or failing to provide information requested by the Regulator

366. In the assessors' view the BMA has the necessary powers to impose sanctions on TCSPs for failing to comply with AML/CFT regulations. The BMA imposes a range of administrative sanctions and on a regular basis.

have the ability, supported by legislation, to impose a range of disciplinary and financial sanctions, including the power to withdraw, revoke, restrict or suspend the financial institution's licence, where applicable and to issue directions to TCSPs

367. In discussion with the BMA as part of the review, the assessors have drawn attention to the importance of being able to demonstrate a robust enforcement function in deserving cases, in addition to the more routine actions of seeking remediation on matters of non-compliance.

368. Remediation can and should be viewed as a mitigating factor in all cases where breaches have occurred. As a matter of principle the level of remediation is always considered in enforcement cases when deciding on the level of sanction – it is a necessary mitigating factor to be taken into account.

369. The assessors noted that whilst the BMA had the powers to issue financial penalties against individuals, and to prohibit individuals, these specific levels of sanctions had yet to be applied.

370. In mitigation the BMA provided evidence of alternative enforcement action which it had taken, and noted that. In a number of cases there was insufficient evidence to support either a financial penalty against an individual, or a prohibition of an individual.

371. Although not affecting the perceived level of compliance with the Standard at the time of the evaluation, the assessors were made aware of steps internally to further strengthen the enforcement process.

Bribery and corruption

Regulators should require TCSPs to have systems and policies, procedures and controls in place to ensure that they or entities that they control and administer do not become engaged directly or indirectly in bribery or corruption

372. TCSPs fall within the category of “relevant commercial organisation” and as such are subject to the provisions of the Bribery Act 2016.

373. Section 11 of the Bribery Act empowers the Minister of Legal Affairs to publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 9(1) of the Bribery Act. In this regard, the MOLA published The Bribery Act 2016 – Guidance (the “BA Guidance”) in June 2017.

374. The assessors met with the Organized and Economic Crime Department (“OECD”) of the BPS. During the meeting it was established that the OECD did proactively investigate corruption cases, including those which have links to the Bermudian Finance Industry.

375. During meetings with the BMA it was established the ABC procedures are checked during onsite visits.

376. The assessors’ view is that Bermuda is technically and effectively compliant.

The Regulator should prohibit TCSPs from:

soliciting, receiving or accepting bribes or gifts, inducements, rewards or advantage that is likely to conflict with the TCSPs’ duty to any Client, to facilitate breach of the regulatory framework or to facilitate the commission of an offence under any law applicable to the TCSPs or to the person offering the bribe, gift, inducement, reward or advantage;

being involved or offering services to corrupt entities or individuals. In this context “entities” includes any entity, whether incorporated or not offering, promising or giving a bribe, gift, inducement or other benefit to a public official as consideration for co-operation, assistance, exercise of influence or act of omission in connection with any transaction or business relating to a governmental matter or a claim, advantage, approval or exemption that the government is

entitled to bestow, whether or not the public official is willing or able to render such assistance; and

directly or indirectly, offering, promising, giving, or demanding a bribe or other undue advantage to obtain or retain business, to facilitate a breach of any law or other improper advantage

377. The Bribery Act 2016 creates offences for all of these actions.

378. The BMA check during onsite visits that TCSPs have anti-bribery and corruption procedures in place. The assessors' view is that Bermuda is technically and effectively compliant.

Policies, procedures and controls

Regulators should require that TCSPs promote employee awareness of Financial Crime Risk and compliance with its policies, procedures and controls

379. GN 10.14 of the AML/ATF Guidance Notes sets out that each TCSP should develop and implement an employee training programme to ensure that all relevant employees are aware of their AML/ATF obligation and understand how to properly perform their job functions.

380. GN 10.16 sets out that relevant employees should receive training specifically regarding ML/TF and AML/ATF.

381. The assessors' view is that Bermuda is technically and effectively compliant.

International sanctions

An effective sanctions regime in relation to terrorism and proliferation financing is required under Recommendations 6 and 7 of the Financial Action Task Force Standards. Regulators should monitor the readiness of TCSPs to comply with sanctions regimes. Testing regulatory compliance with the sanctions regimes should form part of their onsite and off-site supervision

382. The Financial Sanctions Implementation Unit (FSIU) (on behalf of the Minister of Legal Affairs) has been delegated to carry out the administration and implementation of targeted financial sanctions or terrorism, terrorist financing and proliferation financing.

383. The International Sanctions Act 2003 gives Bermuda the power to make regulations in relation to the international sanctions obligations of the UK.

384. The BMA's prudential teams assess compliance. The assessors' view is that Bermuda is technically and effectively compliant.

The Regulator should require that TCSPs:

have adequate procedures to identify their obligations and comply with national laws on financial sanctions. Implementation should include the development of proportionate and adequate systems, internal controls and processes to satisfy relevant sanctions requirements and manage overlapping sanctions regimes;

385. GN 6.29 of the AML/AFT Guidance Notes require each TCSP to have adequate policies, procedures and controls to comply with the Bermuda sanctions regime, which is tested during onsite visits.

ensure that their policies and procedures on sanctions legislation are compliant and being applied in practice. Adequate resources must be allocated to monitoring sanctions compliance. Regular risk assessments and AML/CFT audits are recommended to help assess the effectiveness of the policies and procedures;

386. GN 61 of the Financial Sanctions Guidance requires TCSPs to allocate adequate resources to implement policies and procedures to comply with Bermuda's Sanctions Regime.

387. GN 49-50 of the AML/ATF Guidance notes requires each TCSP to monitor its sanctions related policies, procedures and controls to ensure full, up-to-date compliance with sanctions obligations.

ensure that their staff possess the appropriate knowledge, competencies, awareness and understanding of relevant sanctions regimes, especially staff charged with developing and implementing systems of compliance and policies, procedures and controls

388. GN 6.44 to 6.46 of the AML/ATF Guidance Notes requires each TCSP to have in place a sanctions-related employee training and awareness programme that is appropriate for the TCSP business. At onsite visits, the AML team has a series of sanctions-related questions designed to assess sanctions compliance. The AML team checks this requirement at every onsite.

inform the relevant competent Authorities forthwith where they know or suspect a Client or a person with whom the TCSP has or has had business is affected by a relevant sanction

389. GN 6.74 of the AML/ATF Guidance Notes requires TCSP's to ensure they have clear internal and external reporting processes for reporting true matches.

390. GN 6.75 requires that where a true match is identified the TCSP should verify whether the sanctions target is listed in an Order that has been given effect in Bermuda by virtue of its inclusion in Schedule 1 of the International Sanctions Regulations 2013.

391. As an overall observation the assessors noted a good level of cooperation between the BMA, BPS, FIA and Attorney General's Office. The knowledge that each agency holds re

financial crime is only truly useful when shared and understood by each party. The assessor has noted that this does happen on an ad-hoc and formal basis

392. The assessors were not made aware of any significant sanctions breaches and the sanctions regime appeared to be well-structured.

Observations relating to Part 3J of the Standard - Co-operation

Summary

- **The BMA was able to demonstrate that the regulatory regime is technically compliant with the Standard and is effective in practice.**
- **No action points have been identified by the assessors.**

Information sharing

The Regulator should have the legal authority and sufficient resources to obtain and share both public and non-public information with domestic and foreign counterparts without the approval of another body or government department. The existence of a Memorandum of Understanding (“MOU”) should not be a pre-requisite to exchanging information

393. The BMA’s authority to obtain public and non-public information, in relation to trust and company business, is detailed in the TBA and CSPA respectively.

394. It was evident to the assessors that the BMA can and do supply relevant information obtained from TSPs and CSPs with fellow regulators.

395. The assessors noted that the BMA share information at a domestic level with the BPS and FIA: the statistics for this information-sharing is dealt with below. Similarly, on an international level, statistics provided by the BMA demonstrated compliance with this requirement.

The regulatory system should allow for assistance to be provided to foreign Regulators who make enquiries in the discharge of their supervisory functions and exercise of their powers, including for purposes of day-to-day supervision, investigations and inquiries and enforcement. Information sharing mechanisms and procedures should extend to sharing information both in the context of regular supervision and in other conditions, including crisis situations

396. The assessors have no adverse findings in respect of technical compliance or effectiveness. The BMA is a party to the GIFCS Multilateral MoU.

Requested Regulators may impose conditions on the use of the information by the Requesting Regulator, including limiting the use of the information by the requesting authority

397. Under the TBA and CSPA, information sharing may only take place if the Requesting Regulator has equivalent disclosure restrictions to the BMA.

398. Under the BMA Act, the BMA will not disclose information unless it is satisfied that it is for the purpose of a regulatory function, along with a number of other factors detailed at 30A(5).

399. During discussions with the BMA the assessors did not feel that the BMA were applying excessively restricted conditions on the use of information they provided to fellow regulator. The assessors were satisfied as to technical and effective compliance.

Regulators should have the legal authority to enter into information sharing mechanisms, including MOUs, with other Regulators and Competent Authorities

400. The assessors have no adverse findings in respect of technical compliance or effectiveness. The BMA is a party to 32 MoUs with foreign regulatory authorities, including 15 pertaining to TCSPs.

The mechanisms established by a Regulator to share information should cover information sharing on a timely and constructive basis at the Regulator's own initiative and also on request

401. There is no express statutory requirement mandating the Authority to share information in a timely fashion. However, the Authority has adopted policies to ensure that it has processes in place to respond in a timely manner.

402. Statistics are maintained by the BMA which record the requests received, including the response time. The BMA was able to provide a response within 3-13 days of receiving the request, within an average response time of 9 days in 2016, 6.3 days in 2018 and 7 days in 2019.

Regulators that receive information from another Regulator should have measures to ensure that the information is kept confidential, used only for supervisory purposes and is not disclosed to any third party without the other Regulator's prior approval

403. Section 31 of the BMA Act binds the BMA to confidentiality and creates an offence if disclosed.

404. The BMA has satisfactory written procedures in relation to the receiving, storing and dissemination of confidential material received from fellow regulators.

405. The assessors have no adverse findings in respect of technical compliance or effectiveness.

Information sharing mechanisms could, where appropriate, include establishing colleges for supervisory co-operation and exchange of prudential supervisory information in relation to TCSPs whose operations extend to different jurisdictions

406. As noted earlier the BMA is permitted, for both Trust and CSP business, to share information with foreign regulators

407. The BMA are proactive supporters of the use of colleges to facilitate the exchange of information and discussion of key areas of concern re specific TCSPs.

408. The assessors have no adverse findings in respect of technical compliance or effectiveness.

Regulators should adopt a pro-active approach to sharing information in a coordinated, timely and effective way during each stage of the regulatory relationship pertaining to a TCSP.

Regulators should inform any other Regulator concerned with a TCSP as soon as possible when taking any action that might reasonably be considered to affect that TCSP

409. During discussions with the BMA it was established that their use of colleges satisfied this requirement. In relation to formal investigations, it was established that the BMA would only notify a connected regulator at the conclusion of the investigation. In the assessor's opinion this is justified in order to protect the confidentiality and integrity of investigations.

410. The assessors have no adverse findings with respect to technical and effectiveness compliance.

Other forms of co-operation

Regulators should have the legal ability to provide assistance to foreign Regulators upon request

Regulators should have the legal authority to allow a foreign counterpart to conduct an onsite inspection of a TCSP operating in the Regulator's jurisdiction that is also regulated by the foreign counterpart

Regulators should have mechanisms to collaborate with each other and other competent authorities in exercising their functions in the case of suspected or actual criminal activities by a TCSP. The existence of a MOU should not be a pre-requisite to exchanging information

411. The assessors have no adverse findings in respect of technical compliance or effectiveness.

412. Under the BMA Act, the BMA is charged to assist foreign regulatory authorities in the discharge of their functions. As above BMA does have legal powers to assist foreign regulators.

413. Between 2015 and 2019, the BMA assisted with 64 enquiries that required them to issue Section 30B notices to obtain information. Whilst, due to the sensitive nature of these requests, the BMA did not specify which of the 64 enquiries related to TCSPs; the level of cooperation demonstrated by the BMA across the whole range of financial institutions clearly signified to the assessor the ability of the BMA to meet the requirements of the Standard.

414. Section (3)(1) of the BMA Act includes assisting a foreign counterpart carry out onsite inspections.

415. Section 50(5) of the TBA and section 58(3) of the CSPA allows the BMA to share information with domestic law enforcement authorities to assist competent authorities in the carrying out of local and international criminal investigations.
416. The assessors met with the BMA, FIA and BPS – and reviewed documentation provided by the BMA relevant to this discussion.
417. Of note was the fact that since 2018, the BPS have made a total of 14 requests for information to the BMA; the BMA made 12 disclosures and one request for information to the BPS. There were no concerns raised by either party re this exchange of information
418. The BMA has submitted 24 SARs to the FIA between 2014 and 2019; and in same period received 6 disclosures from the FIA. It was noted from discussions with the FIA that the exchange of information between the BMA and the FIA was not solely confined to the formal submission of SARs, but there was open exchange of information with the BMA, in particular, via the BMA's intelligence officer.
419. The assessors noted a good level of cooperation between the BMA, BPS, FIA and Attorney General's Office – with no specific concerns raised re the sharing of information.
420. The existence of an MOU is not a prerequisite for sharing information.