

7 December 2021

Dear Stakeholders,

Re: Consultation Paper: Banks and Deposit Companies Act 1999 (the Act) - Code of Conduct

The Bermuda Monetary Authority (Authority or BMA) would like to thank stakeholders for their continued engagement as the Authority enhances its framework for supervising the conduct of institutions licensed pursuant to the Act (Institutions). The Authority appreciates the feedback received and is committed to ensuring Bermuda's regulatory regime remains effective and aligned with evolving international standards as well as protecting customers.

The Authority sought feedback on the conduct of business supervisory regime through a Consultation Paper (the Paper) proposing a new Code of Conduct (the Code) for all Institutions.

RESPONSE TO INDUSTRY FEEDBACK

The Authority received feedback from several stakeholders and the response to the **key substantive comments** received on the Code are outlined below.

Code of Conduct: Handling of customer information

Clarification was sought regarding paragraph 21, which requires the Institution to advise persons with access to confidential customer information in writing upon their engagement, and periodically thereafter of privacy issues. Respondents sought clarification from the Authority whether the periodic reminder must be documented and signed or if this can be part of periodic training provided to staff.

Response: The method of reminding staff remains the choice of the Institution. However, they must be able to provide evidence of completion when required to do so by the Authority. This may be in the form of a signed document or confirmation of training attended, along with a copy of the training materials.

Code of Conduct: Recordkeeping

Paragraph 23 notes the Institution shall “keep and preserve appropriate records in Bermuda, which will at least include such records as are appropriate for their functions, as required by any applicable law, and that will enable the provision of information to persons that are entitled to the information on a timely basis.”

Clarification was requested on whether records can be maintained outside Bermuda as long as the Institution can ensure timely accessibility in Bermuda of any records maintained as required by paragraph 24(d). It was suggested that the Authority consider removing the wording “in Bermuda” from paragraph 23.

Response: Paragraph 23 will be reworded to ensure it is clear that where records are required by law to be kept in Bermuda, an Institution must do so. In all other cases, records may be kept in any location as long as they can be accessed from Bermuda in a timely manner when required by the Authority or any other person with a right to request them.

Code of Conduct: Vulnerable Customers

It was noted that paragraphs 52 through 54 contain broad language relating to vulnerable customers; therefore, clarification was sought as to whether it will be up to each Institution to define in order to drive compliance.

Response: It is expected that each Institution will identify vulnerable customers in its own way. A broad definition is given in the Code; however, Institutions are encouraged to review their existing business model and customer base for instances where customers may be in a vulnerable position. The Authority's expectation is not that an Institution seeks to proactively identify every customer with a vulnerability, appreciating that circumstances may change and customers may not wish to reveal personal information.

It is expected that where a customer identifies themselves to the Institution as vulnerable, there are processes and facilities available to assist them. For example, the visually or hearing impaired may request communication via channels more accessible to them, or seniors may request additional explanations from staff or support in decision-making.

Next steps

The Authority's goal when taking an outcomes-based approach to designing the Code was to hold Institutions accountable for the impact of their actions on consumers, while removing the need to be overly prescriptive on processes, which may necessarily differ depending on the circumstances of the Institution and consumer involved. If Institutions remain unclear regarding their responsibilities pursuant to the Code once it is issued, they are encouraged to reach out to their relationship manager or usual Authority contact.

The Authority intends to finalise the Code in light of the feedback received. Amendments to the Act to allow the Authority to issue the Code are expected to be made shortly, at which time the Authority will issue the Code. A suitable transition period will be recommended at that time and communicated to all Institutions to allow them to come into compliance with the new provisions.

The Authority would like to thank stakeholders for their feedback and remains committed to working with Institutions and other interested parties to ensure optimal protection for customers of institutions. Any stakeholder who wishes further clarification or additional information on the conduct of the business regime should contact the Authority directly at **conduct@bma.bm**.