



18 May 2022

Dear Stakeholders,

Re: Consultation Paper – Amendments to the Third Schedule of the Banks and Deposit Companies Act 1999

The Bermuda Monetary Authority (Authority and BMA) issued its Consultation Paper (CP) on 21 August 2020, proposing amendments to the Third Schedule of the Banks and Deposit Companies Act 1999 (BDCA), which sought to expand the permitted customer base of a restricted bank. Additionally, to facilitate the growth of restricted banks in Bermuda, the Authority requested views on amending the minimum net asset amount at the time of licensing for banks and whether these entities should be subjected to Basel III requirements.

Stakeholder Feedback and the Authority’s position

We received several responses from stakeholders and interested parties. We would like to thank you for your feedback which assists the Authority in achieving regulatory outcomes that are in the best interests of Bermuda’s financial services market.

The Authority requested targeted feedback on three main areas and advised our position as follows:

1. *Should the Authority expand the scope of the customer base for restricted banks? If yes, what should the scope include?*
 - a. While there is general support for expanding the Third Schedule of the BDCA, we wish to emphasise that the Authority will continue to apply the BDCA and any other applicable requirements (such as those pertaining to anti-money laundering and anti-terrorist financing (AML/ATF) measures) using its risk-

based methodology taking into account the bank's risk profile. Restricted banks operating in Bermuda will be subject to Bermuda laws as applicable.

- b. Proposed amendment to the Third Schedule of the BDCA will also allow restricted banks to offer banking services to overseas customers. It is not intended to restrict the type of overseas clients as long as restricted banks comply with Bermuda laws, including AML/ATF and sanctions requirements.
- c. Proposals to expand the Third Schedule included offering services to Bermuda residents and businesses who are unable to access basic banking services from the traditional banks as described under section 14(5)(a)(i) to (iii) of the BDCA. The CP does not seek to investigate why persons are unable to access services and/or the myriad of issues that may have led to any specific bank's de-risking approach. The factors contributing to financial exclusion are vast and are affected by socio-economic conditions specific to a country; therefore, any examination into financial exclusion in Bermuda requires an extensive review and response at the national level.

By allowing restricted banks to provide services to affected persons, it provides the opportunity for residents and businesses to continue to avail themselves of financial services, business and employment opportunities, and facilitate daily activities. The Authority determined that Bermuda residents and businesses should have the ability to access all services under Section 14(5)(a) of the BDCA giving persons the opportunity to improve their socio-economic positions. Therefore, the Third Schedule will be amended to allow restricted banks to provide services to persons who are unable to access any of the services described under Section 14(5)(a) of the BDCA.

The Authority will prepare guidance on what restricted banks may consider in determining that a Bermuda resident or business is unable to access services so that it is clear that restricted banks can offer services only to persons who can demonstrate that they are unable to access banking services from the traditional banking sector.

- 2. *Should the minimum net asset amount at the time of licensing remain at \$10 million for restricted banks? If not, please propose an amount with a corresponding rationale for the proposed figure.*

There was a mixed reaction to amending the minimum net asset requirement for restricted banks at licensing. The Authority considered feedback and will amend Section 7 of the Second Schedule of the BDCA to allow a restricted bank to have minimum net assets of not less than \$5 million at the time when the licence is granted. As the restricted bank continues operations, the Authority will review the bank's risk

profile and apply the regulatory requirements accordingly, thus ensuring a level playing approach regarding its risk-based process.

3. *Should restricted banks be asked to comply with Basel III requirements?*

The Authority's position in the CP obligated restricted banks to comply with Basel III requirements when such requirements come into effect. Nevertheless, in seeking stakeholders' views, we found that there was general support for restricted banks to comply with Basel III requirements, and as such, this confirms the Authority's position as stated in the CP.

Proposed Next Steps

The Authority will proceed with recommending the amendments to the Second and Third Schedules of the BDCA as noted above and will, in due course, provide guidance elaborating on what restricted banks may consider when determining that a Bermuda resident or business is unable to access services as described under Section 14(5)(a) of the BDCA.

We would like to thank our stakeholders and interested parties for taking the time to provide valuable feedback on the proposals contained within the CP and we look forward to continued collaboration as we develop proposals to enhance Bermuda's financial services.

Yours sincerely

Bermuda Monetary Authority