



BERMUDA MONETARY AUTHORITY

BANKS AND DEPOSIT COMPANIES ACT 1999

CODE OF CONDUCT

AUGUST 2022

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I. INTRODUCTION

1. This Code of Conduct (Code) is made pursuant to section 8A of the Banks and Deposit Companies Act 1999 (Act). Section 8A allows the Bermuda Monetary Authority (Authority or BMA) to issue a code of conduct for the purpose of providing guidance on the duties, requirements and standards with which to be complied, and the procedures and sound principles to be observed by persons carrying on deposit-taking business (institutions). The Code should be read in conjunction with the Statement of Principles and Statement of Principles & Guidance on The Exercise of Enforcement Powers (Enforcement Guide), as issued and amended from time to time pursuant to section 9 of the Act.

II. OBJECTIVES

2. The objective of the Code is to provide guidance to institutions on the standards, including the minimum criteria for licensing required under the Act, as well as best practices in industry.
3. The Code shall be interpreted in light of the foregoing so as best to give effect thereto. The Act provides that every institution shall, in the conduct of its business, have regard to any Code issued by the Authority.
4. The Authority expects institutions to adhere to the letter and the spirit of the Code. Where the Authority has concerns about adherence to the Code, it will bring its concerns to the attention of the institution and take account of the comments and representations of the institution, as well as, where relevant, its willingness to make appropriate changes to conduct or practice.

III. DEFINITIONS

5. For the purposes of this Code, the definitions appearing in the Act shall apply to the interpretation of this Code.

IV. PROPORTIONALITY PRINCIPLE

6. The Authority appreciates that institutions have varying risk profiles arising from the nature, scale and complexity of their business. Those with more complex risk profiles will require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner.
7. In assessing the existence of sound and prudent business conduct, the Authority will have regard for the appropriateness of provisions of the Code in relation to their application to a particular institution, considering the institution's nature, scale and complexity and the Authority's supervisory objectives.

8. Every institution should be mindful of the proportionality principle in establishing a sound governance, risk management and internal controls framework and complying with provisions of the Code, and should be guided by this section in documenting their adherence to the Code.
9. The proportionality principle described above is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

V. APPLICATION AND PURPOSE

10. The provisions of the Code are applicable to all institutions licensed pursuant to section 14(5) of the Act. The Code is of general application and seeks to consider the wide diversity of institutions that may be licensed. The Code may be revised from time to time. Nevertheless, before the Authority makes a material change to the Code, section 8A of the Act requires a draft of the proposed changes to be published and the Authority to consider any representations made regarding the contents of that draft.
11. Every institution is expected to have regard to the Code, as it may be amended from time to time. Failure on the part of a licensed institution to adhere to the Code is not in itself an offence but is taken into account by the Authority in determining whether the business is being conducted in a prudent manner as required by paragraph 4 of the Second Schedule of the Act. Persistent failure by a licensed institution to abide by the provisions of the Code and the minimum criteria for licensing is likely to result in the Authority taking formal action or revocation. The Enforcement Guide explains how and when the Authority will exercise its enforcement powers.
12. The Code seeks to ensure that, inter alia, all institutions:
 - a) Have an obligation to treat customers fairly and equitably;
 - b) Have continuing regard for the interests of customers in the conduct of their business;
 - c) Ensure that communications with customers are fair, clear and not misleading;
 - d) Provide the necessary protection against the loss of customers' assets due to internal fraud or misuse;
 - e) Handle complaints and errors in a manner that is fair and expedient;
 - f) Ensure that customers, especially retail customers, are aware of their responsibilities within the business relationship;
 - g) Facilitate access to appropriate resources to help customers, especially retail customers, understand their responsibilities within the business relationship; and
 - h) Deal openly and in a spirit of cooperation with the Authority and other relevant regulatory authorities.

VI. COMPLIANCE WITH ALL LAWS

13. The institution shall comply with all laws applicable to it.

14. In particular, institutions shall comply with The Proceeds of Crime Act 1997, The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and the Anti-Terrorism (Financial and Other Measures) Act 2004.
15. The institution shall comply with all customer due diligence obligations and establish adequate policies and procedures to confirm that the institution verifies the identity of each customer on an ongoing basis. The institution shall also verify the source of any monies held on behalf of customers to satisfy themselves that such monies are not of illicit origin.
16. In addition to their customer due diligence obligations, institutions shall establish a documented policy on new customer acceptances, having regard for the assessment of the nature, scale and complexity of the services involved and the ability of the institution to provide the services in question. Institutions need to ensure that they document and fully understand the rationale for forming customer relationships and to be comfortable that the customer's business is suitable on an ongoing basis. Where the institution declines to enter a new business relationship, the details of the proposed customer and the reasons for declining should be kept on file by the institution.

VII. INTEGRITY AND ETHICS

17. An institution shall always conduct its business with integrity. It shall exercise its duties prudently and competently, and it should administer each customer's affairs in accordance with the law. It must deal honestly, professionally and fairly with all customers and seek to ensure that they are not misled as to the services being provided and the duties and obligations of the institution.
18. An institution should always act with due care, skill and diligence. As the institution conducts business and fulfils its obligations to the customer, it shall consider the impact of its communications and interactions, or lack thereof, on the customer. The institution shall address the fair treatment of customers throughout all stages of the product life cycle and the duration of the provision of services.

VIII. CONFLICTS OF INTEREST

19. The institution shall establish and clearly document policies and procedures to manage or avoid conflicts of interest between the institution and its customers. Similarly, it should not enter transactions in which it has a material interest without first disclosing its interest to the relevant parties. Where conflicts of interest arise, the institution shall always keep adequate records of such conflicts and act to ensure it does not place its own interests above those of its customers. All reasonable steps to manage conflicts and to prevent damage to customers' interests shall be taken.

IX. HANDLING OF CUSTOMER INFORMATION

20. The institution shall observe any obligation regarding privacy that may apply in respect of information communicated by customers unless:
- a) It has been given relevant consent to disclose information by the customer;
 - b) It is required by applicable laws to disclose information; or
 - c) It has given information in accordance with the terms of the customer agreement or as part of the ordinary course of providing the services of a deposit-taking business.
21. Employees, partners, officers, directors, contractors and other persons who have access to private or confidential information of the institution and its customers shall be advised in writing upon their engagement and reminded periodically thereafter of privacy issues.

X. INTERNAL MANAGEMENT CONTROLS

Outsourcing

22. The institution shall ensure outsourced activities comply with applicable legislation, codes and guidance covering the conduct of business. Institutions shall establish clear senior management responsibility and oversight for monitoring providers of outsourced services and for reporting to the board. For further information on the Authority's expectations regarding outsourcing, institutions should reference the applicable guidance; however, the Authority will expect that the responsibility of meeting the requirements under the Code will remain with, and be the liability of, the institution and not the service provider.

Record keeping

23. Where required by any applicable law, appropriate records relating to the institution's functions shall be kept and preserved in Bermuda. Record keeping systems shall enable the provision of information to persons that are entitled to the information on a timely basis. This shall include all records not required by law to be kept in Bermuda and which the institution maintains elsewhere. All records the institution is required to maintain must be accurate and kept current.
24. To protect all records from the risk of loss, theft, unauthorised access, alteration or destruction, an institution shall establish and maintain documented policies and procedures to ensure:
- a) Adequate security and safe-keeping of all forms of records;
 - b) Suitable physical and/or redundant electronic storage of records;
 - c) Privacy of all records; and
 - d) Timely accessibility in Bermuda of any records it maintains in any format.

Adequate personnel

25. An institution shall have available suitable numbers of staff who are appropriately trained and competent to discharge their duties effectively. The institution shall ensure that the responsibilities and authority of each staff member are clear and appropriate to their qualifications and experience. The institution shall establish procedures to ensure the adequate supervision of staff in their dealings with customers.
26. An institution shall also formulate and keep up-to-date logs for staff training and development to ensure that staff receive the necessary training appropriate for their roles. Staff shall be provided with ongoing training on the institution's internal policies, procedures and controls. The institution shall ensure that the training provided is directly relevant to the specific nature of the roles and responsibilities that staff members perform. Relevant front-line staff shall be trained to deal promptly and effectively with customer queries and complaints. Such training shall be provided on an ongoing basis, including training on Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) responsibilities and ensuring staff are familiar with the Code.

Adequate systems and controls

27. The institution shall ensure that it has in place systems, controls, policies and procedures to ensure that staff perform their duties in a diligent and proper manner. It is important that staff understand and comply with the established policies and procedures, including those dealing with new business acceptance, financial transactions, privacy and confidentiality, conflicts of interest and staff training.
28. The Authority also expects the institution to have in place a documented disaster recovery and business continuity plan. Such plans shall be tested at least annually, and these tests must be documented and any issues identified, tracked and remediated.
29. The institution shall have policies and procedures that address the process for review and approval of new products, activities, processes and systems and material changes to existing products.
30. The institution shall have in place appropriate controls and protection mechanisms for the protection of customers' deposits and other similar financial assets, including against fraud, misappropriation or other misuses, in accordance with the responsibility the institution has accepted.
31. Where the institution is in control of or is otherwise responsible for monies or assets belonging to the customer, the institution shall have adequate systems and internal controls to identify and promptly remedy errors, fraud or other misuses by the institution or its employees.

Suitability

32. Where the institution is responsible for providing advice to customers, it must seek from the

customer such information about their circumstances and objectives as may be appropriate with regards to the services to be provided. The institution shall discuss various options with the customer to ascertain the optimal solution given the customer's needs and circumstances.

33. The institution shall assess the relevant features of products and services chosen by the customer against the information collected regarding the customer's circumstances and objectives to determine the products' or services' suitability before a contract is signed.

Disclosure prior to providing services

34. Adequate information shall be provided to the customer to enable them to make a competent decision. Prior to the customer entering a contract, the institution shall ensure they effectively communicate, in clear and plain language:

- a) The nature and level of benefits and risks to the customer in a fair and balanced way;
- b) The obligations of the parties involved, including those for the institution, intermediaries and customers for the duration of the relationship; and
- c) The duty of customers to disclose material information.

35. The institution is required to demonstrate in writing that the customer has been made aware of any:

- a) Interest rates;
- b) Fees and charges, including commissions or any other remuneration tied to performance or delivery of services;
- c) Penalties associated with the misuse of a product or service or breaking contractual terms of use; and
- d) Any pre-sale or post-sale barriers to changing a product, service or financial institution.

Clear customer responsibilities

36. While customers maintain a level of accountability for their own choices and decisions, the institution shall appropriately remind customers, in clear and plain language, of their responsibilities to:

- a) Read and understand the terms and conditions of products and services and seek independent financial and/or legal advice where appropriate;
- b) Disclose relevant information as it relates to the institution's legal obligations, including but not limited to its AML/ATF obligations, and inform the institution promptly of any changes to such required information;
- c) Disclose relevant information to assist the institution in managing the relationship and ensuring the suitability of its products and services for the customer, including any change in their circumstances or development of financial difficulties;
- d) Verify statements for correctness and inform the institution of any suspected errors; and
- e) Protect sensitive personal information used to access money or accounts.

Customer awareness

37. Where appropriate to do so, having regard to the nature, scale and complexity of the business undertaken, the institution shall develop resources to assist customers with developing the knowledge and skills necessary to:
 - a) Understand risks (including financial risks);
 - b) Make informed decisions and understand how their actions affect outcomes; and
 - c) Know when to access independent legal and professional advice and assistance to help them make informed decisions.
38. The institution should ensure such resources are available through an appropriate communication channel for the benefit of the customer.¹

Fees and rates

39. The institution shall ensure that the fees and rates charged are always transparent. All current interest rates, exchange rates and fees shall be publicly available at all times via the institution's website and any other appropriate communication channels, including but not limited to print form and advertisements.
40. The institution shall also ensure that adequate notice, as outlined in the terms of business, is given to affected customers before any material change in the fee structure of a product is introduced or any change in the base lending rate.

Terms of business

41. The institution shall document its terms of business and provide each customer with a copy prior to any product or service being provided to that customer, except when it is impractical to do so, in which case the document must be provided at the earliest available opportunity.
42. To ensure customers are dealt with fairly and are informed, institutions shall discuss the terms of business with each prospective customer and keep a record of the terms of the agreement with each customer, including evidence of the customer's agreement to those terms. Where the customer requests it, or it is deemed necessary based on the customer's circumstances, an appropriate staff member must explain the key terms and conditions to them.
43. The record of the terms of business shall include, but not be limited to, the following

¹ Appropriate communication channels may include publication on the institution's website, in the local media, over the telephone, through the institution's branches, in writing delivered to the customer's address on file, via internet banking, or through the customer's relationship manager. This list is by no means exhaustive and appropriate channels should be used based on the type of product and customer in question.

provisions:

- a) A clear description of the product or service to be provided, fees to be charged, the manner in which fees are expected to be deducted or paid, and a confirmation of the minimum notice period which will be given when those fees change;
- b) A general description of the rights and responsibilities of both the institution and the customer; and
- c) A general description of the process for the termination of the business relationship, including provisions for a reasonable notice period, information on the actions or inactions of the customer which will lead to the termination of the business relationship by the institution and the consequences of termination, including any termination or penalty fees which may be charged.

The institution shall not unduly, except as required by law, limit the customer's ability to cancel or transfer a product or service to another provider on the customer's reasonable notice and in accordance with the agreed terms of business.

44. Any changes to the terms of business during the relationship and throughout the product lifecycle shall be communicated to the customer, using an appropriate communication channel and in accordance with the agreed terms of business.

Lending

45. Institutions shall take a responsible approach to lending, taking into consideration sound practices and procedures regarding suitability.
46. When it is determined that changes in interest rates or their method of calculation are required, this shall be communicated to customers in a timely manner and as outlined in the terms of business. The institution shall ensure that the communication channel by which the change is communicated is appropriate for all customers.
47. In cases where the institution chooses to offer a customer an unsolicited increase in overdrafts, credit or debit card limits, the effective change should only be applied after it has been communicated to and approved by the customer. Such increases should only be offered in cases where the institution has reviewed the customer's financial circumstances and determines that they can afford a higher limit without entering financial difficulty.
48. The institution shall ensure that details regarding customers' debts and their collection are not disclosed to unauthorised persons and are kept confidential. Institutions employing debt collection agencies shall appoint firms licensed pursuant to the Debt Collection Act 2018.

Closed accounts and inactive accounts

49. When dealing with issues regarding closed and inactive accounts, institutions shall have

publicly available information via an appropriate communication channel on how it deals with these matters. Customers should be given reasonable notice, assistance and an opportunity to rectify any shortcomings where the institution proposes to close an account or deem it inactive. Where appropriate, funds shall be promptly returned to customers according to their instructions when their account is closed or reactivated. Institutions shall have adequate procedures in place to facilitate the return of funds to customers as outlined in the terms of business governing the account and allowable by law. Where a customer wishes to close an account, the barriers to do so should not be unreasonably significant.

50. An institution shall establish and make publicly available via an appropriate communication channel the criteria which will lead to an account being deemed inactive.
51. The institution shall provide clear and readily available information to customers on how to claim funds that may be in an inactive account.

Vulnerable customers

52. Institutions must take reasonable steps to identify vulnerable customers.
53. Broadly, a vulnerable customer is a natural person who:
 - a) Has the capacity to make their own decisions but who, because of individual circumstances, may require assistance to do so (e.g., seniors, hearing impaired or visually impaired persons); or
 - b) Has limited capacity to make their own decisions and who requires assistance to do so (e.g., minors).
54. The institution shall take steps to provide appropriate facilities and access to information and services for the use of vulnerable customers, including consideration of the appropriateness of channels used to communicate information.
55. Institutions shall establish and implement policies and procedures to accommodate and afford reasonable care to a customer who is identified as vulnerable or who discloses these needs to the institution.

Complaint procedures

56. The institution shall implement a complaints management framework that includes written policies and procedures that seek to address customer complaints in a timely manner.
57. The institution shall document a complaint handling procedure that includes, at a minimum, processes for:

- a) Making a complaint;
 - b) Handling complaints in a fair, timely and appropriate manner;
 - c) Acknowledging receipt of complaints;
 - d) Maintaining a complaint register containing details of complaints received and how they have been dealt with or resolved, including an indication of whether any action was required by the institution; and
 - e) Analysing the patterns of complaints and errors and sharing such information with the board and/or senior management.
58. Where a customer complaint identifies a valid error, the institution shall seek to resolve the error within a reasonable timeframe relative to the nature of the issue.
59. The customer shall not be burdened with unreasonable costs imposed by the institution when seeking to resolve a complaint.
60. Information on the complaint handling procedure and the contact point for complaints shall be publicly accessible on the institution's website or other appropriate communication channel and shared with all customers when forming a new relationship.

Communications with customers

61. The institution shall supply the customer, or the potential customer, with information that is adequate, up to date and material for decision-making purposes.
62. The institution shall not disguise, omit, diminish or obscure material information, statements or warnings. The institution shall consider whether the omission of any relevant fact will result in the information being insufficient, unclear, unfair or misleading.
63. The institution shall ensure that information required for decision-making purposes is presented clearly and in a format that can be easily understood by the customer. It shall consider the impact of content and presentation of information by:
- a) Positioning material information in a location such that it is obvious and apparent;
 - b) Simplifying language where possible; and
 - c) Considering the accessibility of the communication channel.

The institution shall be able to demonstrate that information is supplied to customers with reasonable timeliness, in a comprehensible form and through the appropriate communication channel.

64. The institution shall ensure that information required for decision-making purposes is available where the relevant products and services are being sold. For example, where products are sold online, information shall be available on the institution's website. Where

services are provided via a branch, information shall be made available or accessible at the branch during business hours.

65. The institution shall provide customers with clear instructions on how to report suspected fraud or other breach of security on their account. Contact information for the relevant department shall be easy to locate on the institution's website or other appropriate communication channel.

Statements, reports and notices to the customer

66. As appropriate for each account, the institution shall provide the customer with periodic written statements of the:

- a) Value;
- b) Composition;
- c) Transactions or other fulfilment of the institution's obligations;
- d) Fees and charges (including commissions, exchange rates and interest rates); and
- e) Interest earned in the relevant time period.

67. The frequency and communication channel with which statements are provided shall be commensurate with the type of product and customer. In general, statements need to be self-explanatory, comprehensive, objective and clear.

68. Unless prohibited by law, the institution shall provide a customer with a closing statement when a relationship is terminated.

69. The institution shall notify the customer within a reasonable time and through an appropriate communication channel of any material change, such as:

- a) Material modification to products or services;
- b) Discontinuation of products and services;
- c) Contractual changes to agreements and terms and conditions; or
- d) The institution's intention to transfer a customer's debt to a licensed debt collection agency.

Advertising and promotions

70. The Authority expects institutions to promote products and services in a manner that is clear, fair and not misleading.

71. The institution shall ensure that its advertisements:

- a) Do not contain a statement, promise or forecast that is untrue, misleading or deceptive;
- b) Are not designed in such a way as to distort or conceal any relevant subject material;
- c) Are clearly recognisable as advertisements or promotions;
- d) Use clear and easy-to-understand language; and
- e) Where applicable, include a statement of related risks.

XI. PUBLICATION AND DISCLOSURE OF LICENCE

72. An institution shall ensure that its status as a licensed institution and the type of licence held is published on its website and disclosed in all advertisements and correspondence.
73. The Authority draws the attention of institutions to section 15 (2) of the Act regarding the display of licences.

XII. COOPERATION WITH REGULATORY AUTHORITIES

74. The institution is expected to deal openly and in a spirit of cooperation with the Authority and any other relevant regulatory authorities. Institutions shall alert the Authority to any proposal to extend or reduce their business materially and if it is proposed to undertake non-deposit-taking business within the licensed entity. An institution shall also be proactive in alerting the Authority to any significant developments relevant to its business, such as:
 - a) Staffing;
 - b) Material insurance claims for damages arising from acts, omissions or breaches of professional duty;
 - c) Involvement in criminal proceedings within or outside Bermuda;
 - d) Changes to its corporate structure; or
 - e) Issues affecting its ability to meet or continue meeting the minimum licensing criteria or other breaches of expected standards of behaviour.

(In this regard, the Authority would also draw the attention of the institution to the proportionality principle in section IV, as well as the reporting and notification requirements in the Act).