



15<sup>th</sup> September 2014

## NOTICE

### Code of Practice Consultation Paper

1. On 31<sup>st</sup> December 2012 The Bermuda Monetary Authority (the “Authority”) consulted with the corporate service provider (CSP) industry on various documents covering the proposed CSP regime. The Authority thanks industry for the feedback received and now posts the final amended documents which include, to the extent deemed appropriate, the changes recommended. These documents include:
  - a. CSP Statement of Principles
  - b. CSP Guidance Notes
  - c. Appendix I – CSP Application
  - d. Appendix II – CSP Questionnaire for Shareholder Controller
  - e. Appendix III – CSP Questionnaire for Senior Executives
  - f. Appendix IV – Business Plan
  - g. Appendix V – Certificate of Compliance
2. In relation to the Guidance Notes, the market overwhelming recommended that the items included in the December 2012 document would be best placed in the Code of Practice as provided for by the legislation. The Authority has now prepared the Code of Practice pursuant to section 7 of the Corporate Service Provider Business Act 2012 (the “Act”) and posts it for comment. The Code provides guidance on the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on corporate service provider business. The Code should be read in conjunction with the Statement of Principles issued under section 6 of the Act.
3. The Authority welcomes any comments from industry stakeholders and interested parties on the Code of Practice.
4. Comments should be sent to [policy@bma.bm](mailto:policy@bma.bm) by 15<sup>th</sup> October 2014.

# **BERMUDA MONETARY AUTHORITY**

## **CODE OF PRACTICE**

### **CORPORATE SERVICE PROVIDER BUSINESS ACT 2012**

**SEPTEMBER 2014**

FINAL DRAFT

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## **INTRODUCTION**

This Code of Practice (the “Code”) is made pursuant to section 7 of the Corporate Service Provider Business Act 2012 (the “Act”). Section 7 requires the Bermuda Monetary Authority (the “Authority”) to publish in such manner as it thinks fit a code that provides guidance on the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on corporate service provider business. The Code should be read in conjunction with the Statement of Principles issued under section 6 of the Act.

### **I. OBJECTIVES**

1. The objectives of this Code are to provide guidance to licensed undertakings on the standards required under the Act and other financial services legislation, as well as to the best practice in the industry.
2. This Code shall be interpreted in the light of the above objectives so as best to give effect thereto. The Act provides that every corporate service provider shall in the conduct of its business have regard to any Code of Practice issued by the Authority.
3. The Authority expects corporate service providers to comply with the letter and the spirit of this Code. Where the Authority has concerns about compliance with the Code, it will bring its concerns to the attention of the corporate service provider and take account of the comments and representations of the corporate service provider as well as, where relevant, his willingness to make appropriate changes to conduct or practice.

### **II. DEFINITIONS**

4. For the purposes of this Code, the definitions appearing in section 2 of the Act shall apply to the interpretation of this Code.

“corporate service provider business” means the provision of any of the following corporate services for profit—

acting as a company formation agent, or agent for the establishment of a partnership;

providing nominee services, including (without limitation) acting as or providing nominee shareholders;

providing administrative and secretarial services to companies or partnerships including one or more of the following services—

providing a registered office;

providing an accommodation, correspondence or administrative address;

maintaining the books<sup>1</sup> and records of a company or partnership;

filing statutory forms, resolutions, returns and notices;

acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a person authorised to accept service of process on behalf of a company or partnership or to accept any notices required to be served on it;

acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a director, officer, secretary, alternate, assistant or deputy secretary of a company or an officer of a partnership;

keeping or making any necessary alteration in the register of members of a company in accordance with section 65 of the Companies Act 1981;

the performance of functions in the capacity of resident representative under the Companies Act 1981, Exempted Partnerships Act 1992 and the Overseas Partnerships Act 1995; and

providing any additional corporate or administrative services as may be specified in regulations.

### **III. PROPORTIONALITY PRINCIPLE**

5. The Authority appreciates that corporate service providers have varying risk profiles arising from the nature, scale, and complexity of their business, and that those corporate service providers with higher risk profiles would require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner.
6. Accordingly, the Authority will assess the corporate service provider's compliance with the Code in a proportionate manner relative to its nature, scale, and complexity. These elements will be considered collectively, rather than individually (e.g. a corporate service provider could be relatively small in scale, but carry out extremely complex business and therefore would still be required to maintain a sophisticated risk management framework).
  - (a) Nature includes the relationship between the client entity and the corporate service provider or characteristics of the service provided (e.g. non-executive director versus fully managed office including the provision of directors and officers, etc.);
  - (b) Scale includes size aspects such as volume of business conducted or size of the balance sheet in conjunction with materiality considerations; and
  - (c) Complexity includes organisational structures and ease of information transmission.
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

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<sup>1</sup> "Books" means statutory books of the company or partnership.

particular corporate service provider taking into account the corporate service provider's nature, scale, and complexity and the Authority's prudential objectives.

8. Holders of a limited corporate service provider licence in particular, should be mindful of the proportionality principle in establishing a sound corporate governance, risk management, and internal controls framework and complying with provisions of the Code, and should be guided by this section in documenting their compliance with the Code.
9. The proportionality principle, discussed above, is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

#### **IV. APPLICATION**

10. This Code applies to all holders of corporate service provider licences granted under section 11 of the Act. The Code is of general application, and seeks to take account of the wide diversity of corporate service providers that may be licensed. The Code may be revised from time to time. However, before the Authority makes a material change to the Code, section 7(3) of the Act requires it to first publish a draft of the proposed changes and to consider any representations made to it regarding the contents of the draft.
11. Every corporate service provider licensed under the Act in Bermuda is expected to have regard to the Code. The Code is not a statement of the law and in particular does not affect a licensed corporate service provider's obligations under company or common law. Failure on the part of a licensed corporate service provider to comply with the provisions of this Code is not an offence but is taken into account by the Authority in determining whether or not the business is being conducted in a prudent manner as required by paragraph 3 of Schedule 1 of the Act. Persistent failure by a licensed corporate service provider to abide by the provisions of the Code is likely to result in the Authority taking formal action.

#### **V. CLIENT DUE DILIGENCE**

12. Licensed corporate service providers must have procedures in place to ensure that proper due diligence is carried out before a decision is made to act for any new client. At a minimum, licensed corporate service providers need to be able to comply with The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and the Anti-Terrorism (Financial and Other Measures) Act 2004, together with any other relevant legislation that may come into force from time to time. To ensure compliance with these requirements, licensed corporate service providers should have adequate policies and procedures in place to confirm that they know on an ongoing basis the current identity of each director, partner or officer and to the fullest extent possible the current identity of the beneficial owners of the entities under administration.

## **VI. INTEGRITY AND ETHICS**

13. A licensed corporate service provider must conduct its business with integrity at all times and should not attempt to avoid or contract out its responsibilities under this Code. It must exercise its corporate service duties prudently and competently and it should administer each client's affairs in accordance with the law. It must deal fairly with all clients and seek to ensure that they are not misled as to the service being provided and the duties and obligations of the service provider. A licensed corporate service provider should always act with due care, skill and diligence.
14. Generally the licensed corporate service provider should avoid situations in which a conflict of interest arises between its business and that of its clients. Similarly and unless authorised to do so, it should not enter into transactions in which it has a material interest without first disclosing it to the relevant parties. Where conflicts of interest arise the corporate service provider must ensure that the circumstances are properly disclosed to those affected and must act at all times to ensure it does not unfairly place its own interests above those of its clients.

## **VII. DISCLOSURE OF INFORMATION**

15. Licensed corporate service providers should observe any obligation of confidentiality that may apply to information communicated by persons concerned with clients (e.g. shareholders, directors, officers, senior executive, controller, partner, associate, and accountants) unless the licensed corporate service provider is given relevant consent to disclose information, is required by applicable law to disclose information or gives information in accordance with the terms of the client constitutional documents or in the ordinary course of the administration of the client's structure. In maintaining the confidentiality of those persons to whom the corporate service provider has responsibility, the licensed corporate service provider should take particular care not to mislead entitled third parties about the beneficial ownership of its client entities.
16. Employees, partners, officers, directors and other persons who have access to confidential information of the licensed corporate service provider and the client structures it administers should be advised in writing upon their engagement and reminded periodically thereafter by the licensed corporate service provider of confidentiality issues.

## **VIII. INTERNAL MANAGEMENT CONTROLS**

### **Prompt and Timely Execution**

17. A licensed corporate service provider should deal effectively and in a timely manner with all requests from those persons to whom the corporate service provider is responsible or accountable, having previously sought and obtained such consents or approvals as may be necessary.

### **Competent and Effective Management**

18. A licensed corporate service provider should have effective management and systems that are commensurate with the nature, scale and complexity of the business it undertakes. It must also have appropriate management resources to control the affairs of the licensed business, including ensuring compliance with legal obligations and standards under the Code.

### **Delegation**

19. The partners or board of directors of a licensed corporate service provider are responsible for the proper exercise of their powers and ensuring that the licensed corporate service provider has proper policies, procedures and other arrangements in place. They may delegate the administration of the licensed corporate service provider's duties to directors, officers, partners, employees or committees as they deem appropriate. When doing so, decisions should align with authorisation and signing powers outlined in policies and procedures.
20. When delegating its duties and/or granting power of attorney, a licensed corporate service provider should have regard to the client constitutional documents, the services agreement, applicable laws and any internal procedures as appropriate.

### **Accounting and other Record Keeping**

21. Licensed corporate service providers must 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 interested in the structures being administered and entitled to the information on a timely basis. This should include the identity of shareholders, directors, officers or partners. In addition, records of account must be maintained in line with the laws applicable to each client's structure as well as for the licensed corporate service provider itself in accordance with the laws applicable to it.

### **Adequate Personnel**

22. A licensed corporate service provider must have available suitable numbers of staff who are appropriately trained and competent to discharge its corporate service duties effectively. It should ensure that the responsibilities and authority of each staff member are clear and appropriate to his or her qualifications and experience, and that staff receive the necessary training appropriate for their roles.

### **Adequate Systems and Controls**

23. A licensed corporate service provider should ensure that it has in place systems, controls, policies and procedures, to ensure that staff members perform their duties in a diligent and proper manner. It is important that staff understand and comply with the established systems, policies and procedures including those dealing with new business acceptance,



financial transactions, and staff training. The Authority also expects the corporate service provider to have in place a documented business interruption recovery plan, dealing with all of its critical functions.

### **Fees and Remuneration**

24. A licensed 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. Licensed corporate service providers should also ensure that adequate notice is given before any material change in the fee structure is introduced.

### **Client Agreements**

25. To ensure clients are dealt with fairly and are informed, corporate service providers should discuss terms of business with each prospective client and keep a written record of the terms of the agreement with each client, including evidence of the client's agreement to those terms. That agreement should include, but not be limited to, the following provisions:
  - (a) a clear description of the services to be provided, fees to be charged and the manner in which fees are expected to be deducted or paid;
  - (b) a general description of how and by whom requests for action are to be given;
  - (c) a general description of any provisions for the termination of the agreement and the consequences of termination; and
  - (d) a statement that the corporate service provider is licensed by the Authority including the type of licence issued.

### **Client Complaint Procedures**

26. A licensed corporate service provider should ensure that client complaints are properly handled and dealt with on a timely basis. A record of the details of the complaint, the licensed corporate service provider's response and any action taken as a result should also be made in writing and maintained.

### **Nominee Shareholder Agreements**

27. Where a licensed corporate service provider acts as, provides or arranges for others to provide, a nominee shareholder (whether as a registered shareholder or otherwise to hold shares on behalf of another) for the beneficial owner of a client structure, the corporate service provider shall ensure that there is a written nominee agreement (or other such document that forms a nominee agreement) that will identify the beneficial owner. The licensed corporate service provider shall retain a copy of such in its records.

## **Risk Management Framework**

28. Risk identification and management forms a part of any business and as such the Authority expects the licensed corporate service provider to have an appropriate risk control framework in place for the benefit of its stakeholders.
29. A licensed corporate service provider must implement an appropriate risk management framework commensurate with the scale and risk profile of its business, its objectives, structure, operations, processes, services and assets.

## **IX. DISCLOSURE OF LICENSING BODY**

30. A licensed corporate service provider should ensure that its status as a licensed undertaking is disclosed in all advertisements and correspondence. The following wording is suggested:

“Licensed to conduct Corporate Service Provider Business by the Bermuda Monetary Authority.”

## **X. COOPERATION WITH REGULATORY AUTHORITIES**

31. A licensed corporate service provider is expected to deal openly and in a spirit of cooperation with the Authority and any other relevant regulatory authorities. Licensed corporate service providers should alert the Authority to any proposal to extend their business materially and in particular if it is proposed to undertake non-corporate service business within the licensed entity. Licensed corporate service providers should also be proactive in alerting the Authority to any significant developments relevant to its staffing or to its systems and controls environment. (In this regard the Authority would draw the attention of licensed corporate service providers to sections 12, 22, 45, and 46 of the Act.)



# **BERMUDA MONETARY AUTHORITY**

## **STATEMENT OF PRINCIPLES**

### **CORPORATE SERVICE PROVIDER BUSINESS ACT 2012**

**SEPTEMBER 2014**

FINAL DRAFT

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## **I. INTRODUCTION**

1. This Statement of Principles (the “Principles”) is made pursuant to section 6 of the Corporate Service Provider Business Act 2012 (the “Act”) which requires the Bermuda Monetary Authority (the “Authority”) to publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act:
  - a. in interpreting the minimum criteria specified in Schedule 1 to the Act and the grounds for revocation specified in section 15;
  - b. in exercising its power to grant, revoke or restrict a licence;
  - c. in exercising its power to obtain information, reports and to require production of documents; and
  - d. in exercising other enforcement powers
2. The Principles are of general application and seek to take into account the wide diversity of Corporate Service Providers (“CSPs”) that may be licensed under the Act and of the prospect of institutional and market changes. As a consequence of this, the Principles may likely need to be revised and further developed over time. If the Authority makes a material change in the Principles, section 6(2) of the Act provides that the change is published or a revised version of the Principles issued. The Principles should be read in conjunction with the Guidance Notes which are issued pursuant to section 6(3) of the Act and which set out guidance relating to implementing certain standards for the effective control of business by licensed CSPs and for the fair treatment of their clients.
3. This document is also to be read in conjunction with the Statement of Principles on the Use of Enforcement Powers (“SPUEP”). The SPUEP, also made pursuant to section 6 of the Act, sets out the principles in accordance with which the Authority acts or proposes to act in exercising its power to revoke or restrict a licence. In relation to enforcement activities where there are any differences between the SPUEP, the Proceeds of Crime (Anti- Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 Statement of Principles (“AML Principles”), and the Principles then the content of the SPUEP will prevail.

## **II. EXPLANATION FOR THE STATEMENT OF PRINCIPLES**

4. The Principles, along with the SPUEP, are relevant to the Authority’s decisions on whether to license a CSP (company, partnership or individual) or to revoke or restrict a licence once granted. The Authority’s interpretation of the minimum licensing criteria in Schedule 1 and of the grounds for revocation in section 15 of the Act, together with the principles underlying the exercise of its powers, encapsulate the main standards the Authority considers when conducting its supervision of CSPs. The functions of CSP supervision include monitoring the ongoing compliance of CSPs with these standards and verifying compliance with the obligations imposed under the Act, the policies and procedures of the CSP and compliance with external obligations, for example the Proceeds of Crime Act 1997, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and

the relevant Regulations..

5. If there are concerns, the Authority will consider what steps should be taken to address the issue and where appropriate, it will seek remedial action by persuasion and encouragement. Where persuasion and encouragement fail, the Authority may look to stronger measures to ensure compliance. If the Authority considers that its powers should be exercised in the public interest, it may utilise the various powers provided in the Act including the imposition of restrictions on a licence and, ultimately, revocation of a licence.
6. The Principles include references to various policy and guidance papers issued by the Authority from time to time. Copies of the relevant material are available from the Authority's website [www.bma.bm](http://www.bma.bm).
7. Section III of the Principles considers the interpretation of each of the licensing criteria in Schedule 1 to the Act. Section IV sets out the considerations relevant to the Authority's exercise of its discretion to grant a licence. Section V sets out the principles underlying the exercise of the Authority's power to obtain information and reports and to require the production of documents.
8. The SPUEP sets out the interpretation of the various grounds for the revocation of a licence in section 15 of the Act and the principles underlying the exercise of the Authority's discretion to revoke or impose restrictions on a licence (section 14 of the Act) and to impose restrictions on a licence in cases of urgency (section 18).
9. It is most likely that the Authority would exercise its powers to restrict or revoke a licence, in the context of the enforcement process. The Authority may also exercise its discretion to utilise such powers in a supervisory context (e.g. to impose additional reporting requirements or where an institution ceases operations or conducts limited scope business). These powers might also be used to protect the interests of the public, in connection with an external threat unconnected with the CSP's conduct, in accordance with section 19 of the Act.

### **III. SCHEDULE 1: MINIMUM CRITERIA FOR LICENSING**

#### ***Introduction***

10. Before a CSP may be granted a licence, the Authority has to be satisfied that all the criteria in Schedule 1 to the Act are or are capable of being fulfilled by the applicant. Once licensed, CSPs are subject to the Authority's continuing supervision and regulation, which includes the criteria for licensing. CSPs are required to submit information about their business at intervals determined by the Authority in accordance with the Act and any related regulations, rules, guidance notes or codes. Where a CSP fails to meet a criterion, the Authority can and may take action in accordance with the powers vested under the Act and as detailed in the Principles, the AML Principles and the SPUEP.

11. The Act sets out the framework for minimum criteria to be met and complied with by licensed CSPs. These criteria are interpreted and applied in the context of the particular circumstances of individual CSPs, and developments in the sector generally. In addition to reviewing the periodic, annual and other reporting data received from CSPs, the Authority's supervision involves detailed prudential discussions with CSPs' senior management as required. Therefore the Authority shall determine the frequency of those discussions based on the nature, scale, complexity and risks undertaken by the CSP and the conduct of its business. Meetings may take place either at the Authority's offices or at the CSP's premises. In addition, compliance visits are routinely made to the premises of CSPs to add to the Authority's understanding of the CSP's management structures, operations, policies and controls and to assist the Authority in satisfying itself that each CSP continues to conduct its business prudently and in accordance with all relevant criteria. Where a CSP becomes aware of breaches or potential breaches, it is expected that the CSP will alert the Authority forthwith so that any necessary remedial action can quickly be agreed. Similarly, the CSP must alert the Authority to any proposed material change in its business. This will allow the Authority to assess whether the changes impact the CSP's ability to fulfil the minimum criteria.
12. This part of the Principles sets out the Authority's interpretation of the statutory licensing criteria.

***Schedule 1 Paragraph 1: "Controllers and officers, to be fit and proper persons"***

13. This paragraph provides that every person who is or is to be a controller or officer (as defined under section 2 of the Act (officers are defined as including persons appointed as directors, secretaries or senior executives) of a CSP is to be a fit and proper person to perform CSP related functions. With regard to an individual who is, or is to be, a controller or officer the relevant considerations include whether the person has relevant experience, sufficient skills, knowledge, and soundness of judgment to undertake and fulfil their particular duties and responsibilities. The standards required of persons in these respects will vary considerably, depending on the precise position held by the person concerned. Thus, a person could be fit and proper for one position but not be fit and proper for a position involving different responsibilities and duties. The diligence with which the person is fulfilling or is likely to fulfil those duties and responsibilities is also considered, so that the Authority can assess whether the person does or will devote sufficient time and attention to them.
14. The Authority sees the standards as being particularly high in the case of persons with primary responsibility for the conduct of a CSP's affairs, taking into account the nature and scale of the CSP's business.
15. In assessing whether a person has the relevant competence, soundness of judgment and diligence, the Authority considers whether the person has had previous experience with similar responsibilities, the record in fulfilling them and, where appropriate, whether the person has suitable qualifications and training. As to soundness of judgment, the Authority looks to the person's previous conduct and decision taking.

16. The probity of the person concerned is very important. It is essential that a person who is responsible for the conduct of CSP business is of high integrity. In contrast to the fitness elements of this criterion which reflects an individual judgment relating to the particular position that the person holds or is to hold, the judgment of probity reflects much more of a common standard, applicable irrespective of the particular position held.
17. Specifically, the Authority takes into account the person's reputation and character. It considers, inter alia, whether the person has a criminal record, convictions for fraud or other dishonesty, which would clearly be particularly relevant. The Authority also gives particular weight to whether the person has contravened any provision of law, including legislation covering the trust, banking, insurance, and investment sectors or other legislation designed to protect members of the public against financial loss, due to dishonesty, incompetence or malpractice. In addition, it considers whether the person has been involved in any business practices appearing to the Authority to be deceitful or oppressive or improper, or which would otherwise discredit his or her method of conducting business. In addition to compliance with statutory provisions, the Authority also considers a person's record of compliance with various non-statutory codes in so far as they may be relevant to the licensing criteria and to the public interest.
18. The Authority also takes into consideration whether the person has been censured or disqualified by professional or regulatory bodies, e.g. Institute of Chartered Secretaries and Administrators; Institute of Directors; Society of Trust and Estate Practitioners; Bermuda Bar Association; Institute of Chartered Accountants of Bermuda; Bermuda Stock Exchange; Association for Investment Management and Research; or corresponding bodies in other jurisdictions. Those who have been censured or disqualified are unlikely to be acceptable.
19. While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognises that lapse of time, and a person's subsequent conduct, are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.
20. Once a CSP is licensed, the Authority continues to consider the performance of the person in exercising his or her duties. Imprudence in the conduct of a CSP's business, or actions which have threatened (without necessarily having damaged) the public interest will reflect adversely on the competence and soundness of judgment of those responsible. Similarly, failure by a CSP to conduct its business with integrity and professional skills will reflect adversely on the probity and/or competence and/or soundness of judgment of those responsible. This applies whether the matters of concern have arisen from the way the persons responsible have acted or from their failure to act in an appropriate manner. The Authority takes a cumulative approach in assessing the significance of such actions or omissions – that is, it may determine that a person does not fulfil the criterion on the basis of several instances of such conduct which, if taken individually, may not lead to that conclusion.



## *Shareholder Controllers*

21. Shareholder controllers, as defined by sections 3(4) and 3(5) of the Act may hold a wide variety of positions relating to a CSP, and the application of the fit and proper criterion takes account of this. The key consideration is the likely or actual impact on the interests of clients and potential clients of a person holding the particular position as shareholder controller. This is viewed in the context of the circumstances of the individual case, and of the particular position held. The general presumption is that the greater the influence on the CSP the higher the threshold will be for the shareholder controller to fulfil the criterion. Thus, for example, higher standards will generally be required of a shareholder controller owning, say, 20 per cent or more of the shares of a CSP compared with a shareholder controller owning 10 per cent.
22. In reviewing the application of the criterion to shareholder controllers or persons proposing to become such controllers, the Authority considers two main factors.
23. First, it considers what influence the person has or is likely to have on the conduct of the affairs of the CSP. If the person does, or is likely to, exercise a close control over the business, the Authority would look for evidence that he has the probity and soundness of judgment and relevant knowledge and skills for running a CSP. On the other hand, if the shareholder does not, or is not likely to, influence the directors and management of the CSP on the detailed conduct of the business, it would not be necessary to require such a level of relevant knowledge and experience.
24. The second consideration is whether the financial position, reputation or conduct of the shareholder controller or prospective shareholder controller has damaged or is likely to damage the CSP through ‘contagion’ which undermines confidence in that CSP. For example, if a holding company, or a major shareholder, were to suffer financial problems it could damage confidence of clients or potential clients in the stability or financial integrity of the licensed CSP. Generally, the higher the shareholding the greater the risk of ‘contagion’ if the shareholder encounters financial difficulties. The risk of contagion is not, however, confined to financial weakness. Publicity about illegal or unethical conduct by a holding company or another member of the group may also damage confidence in the CSP. CSPs are expected to notify the Authority immediately if they become aware of material concerns regarding the suitability of a shareholder controller.
25. In the case of a controller who ‘directs’ or ‘instructs’ a shareholder controller, similar considerations apply to those relevant to assessing the fulfilment of the shareholder controllers criterion. In other words, the standards that an indirect controller needs to satisfy are likely to be at a minimum the standards also required of the person who is indirectly controlled.
26. Where a person is a controller by virtue of ‘directing’ or ‘instructing’ the board of a CSP, the standards required are high. The controller has to have the probity and relevant knowledge, experience, skills and diligence for running a CSP. The qualities required are those which are also appropriate for the board of directors or partners of

a CSP.

***Schedule 1 Paragraph 1A: "Corporate Governance"***

27. This paragraph provides that, the CSP shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, scale, complexity and risk profile of the CSP.
28. In the case of a CSP which is a company or partnership, the business should be effectively directed by such number of individuals as the Authority considers appropriate given the nature, scale, complexity and risk profile of the CSP. The Authority recognises that standards of good corporate governance may differ between CSPs according to the size and complexity of their respective businesses. At a minimum the Authority expects there to be qualified individuals appointed to the board or acting as partners who can apply informed and independent judgment to the overall governance of the CSP.
29. In the case of a CSP which is a company, the directors should include such number (if any) of non-executive directors, as the Authority considers appropriate. The number will depend on the circumstances of the CSP and the nature, size, complexity and risk profile of the CSP.
30. The Authority considers that non-executive directors can play a valuable role in bringing an outsider's independent perspective to the running of the business and to ensure proper challenge to the executive directors and other management. The Authority sees non-executive directors as having, in particular, an important role as members of a CSP's audit committee or in performing the role which such a committee would otherwise perform.

***Schedule 1 Paragraph 3: "business to be conducted in a prudent manner"***

31. Sub-paragraphs 1 and 5 of Schedule 1 to the Act make it clear that there is a general requirement for CSPs to conduct their business in a prudent manner. It is the overall responsibility of the board, partners, and senior management of an institution to ensure that there is effective control over the entire business and that it is conducted prudently. Board members, partners, and senior management must understand the underlying risks in the business and be committed to a robust control environment.
32. Sub-paragraphs 1A to 4 set out a number of specific requirements, each of which must be fulfilled before a CSP may be regarded as conducting its business in a prudent manner..
33. The Act also makes it clear that the specific requirements outlined in sub-paragraphs 1A to 4 are not exhaustive. Accordingly, the Authority takes into account a range of other considerations in assessing whether a CSP is prudently run. These include for example, the CSP's management and corporate governance arrangements (such as, in

the case of a company, the composition of the board of directors and the arrangements for the board's overall control and direction of the institution); the CSP's general strategy and objectives; anti-money laundering/ anti-terrorist financing policies and procedures; pre-vetting processes and policies designed to address the risks inherent in introducing entities and individuals to Bermuda's corporate environment; planning arrangements; policies on accounting, collections and bad debt; and recruitment arrangements and training to ensure that the CSP has adequate numbers of experienced and skilled staff in order to carry out its various activities in a prudent manner. Particularly close attention is also paid to the arrangements in place for preventing and detecting criminal activities, and for ensuring compliance with the CSP's legal obligations in preventing money laundering and terrorist financing. The Authority would also expect a CSP to occupy premises suitable for the purpose of conducting its business.

34. Failure by the CSP to comply with applicable laws in foreign jurisdictions in which the CSP or its subsidiaries operate may also affect the Authority's assessment of prudent conduct.
35. A CSP should have policies and procedures to enable it to comply with international sanctions in force in Bermuda.
36. The Act does not purport to affect or alter the provisions of the Companies Act 1981 (the "Companies Act"). Where a licensed CSP provides contracted services to a Bermuda regulated company, the Authority expects the licensed CSP to fulfil these contractual obligations related to the company's compliance with the Companies Act. Failure by the CSP to comply with the Companies Act may be assessed by the Authority as grounds for determining if there are prudential concerns.
37. Licensed CSPs face a wide variety of potentially major financial risks in their business although the possibility of many of these risks crystallising is, hopefully, generally remote. Rather than requiring CSPs to hold capital against all these risks, the Act requires CSPs to hold adequate insurance cover. A CSP will not be regarded as carrying on its business in a prudent manner unless it maintains insurance cover that is appropriate to the nature and scale of its operations.
38. In judging the adequacy of insurance protection, the Authority looks to be satisfied that the scope and scale of cover in place provides reasonable assurance of the ability of the CSP to continue to trade in the event that it should face either major damage to its infrastructure or material claims from clients for loss and damage sustained. It is in the first instance for those directing the business of the licensed undertaking to assess the level of risk they face in the business and to determine the type and extent of coverage appropriate for that business. The Authority will review the adequacy of cover in place, having regard to the scale, composition and complexity of the business.

***Schedule 1 Paragraphs 3 (3) and (4): “adequate accounting and record- keeping systems”***

39. The Authority does not regard a CSP’s records and systems as adequate unless they can enable its business to be prudently managed and the CSP is able to comply with the duties imposed on it by or under the Act. In other words, the records and systems must be such that the CSP is able to fulfil the various other elements of the prudent conduct criterion and to identify threats to the public interest. They should also be sufficient to enable the CSP to comply with the notification and reporting requirements under the Act. Thus, delays in providing information or inaccuracies in the information provided, will call into question the fulfilment of the requirement of sub-paragraphs 3 (3) and 3 (4). The systems for client records should be sufficient to enable the CSP to maintain the books and records of clients in the manner required under the Companies Act or other relevant legislation.
40. The nature and scope of the particular records and systems which a CSP should maintain should be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its clients and potential clients. In determining whether a CSP’s records and systems are adequate, the Authority considers the nature, scale and complexity of its business.

***Schedule 1 Paragraph 4 “integrity and skill”***

41. This paragraph is concerned with the manner in which the business of the licensed CSP is conducted and is distinct from the question of whether its controllers and officers are fit and proper persons. The business of a CSP must be conducted ethically and honestly and the staff employed by the CSP must have the skills and knowledge appropriate to the nature and scale of the CSP.
42. The integrity element of the criterion requires the CSP to observe high ethical standards in conducting its business. Criminal offences or other breaches of statute will obviously call into question the fulfilment of this criterion. Particularly relevant are contraventions of any provision made by or under enactments, whether in Bermuda or elsewhere, designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. Doubts may also be raised if the CSP fails to comply with recognised ethical standards such as those embodied in various codes of practice. The Authority considers the seriousness of the breach of the code, to whether the breach was deliberate or an unintentional and unusual occurrence, and its relevance to the fulfilment of the criteria in Schedule 1 and otherwise to the interests of clients and potential clients.

Professional skills cover the general skills which the CSP should have in place to effectively conduct its business, for example, in relation to the provider responsibilities, establishing and operating systems of internal controls, and ensuring compliance with legal and supervisory requirements. The level of skills required will vary according to the individual CSP, depending on the nature and scale of its activities. CSPs are expected, at a minimum, to be in compliance with their respective industry standards in

relation to CSPs, where such standards exist. This will assist in ensuring that business is carried out in conformity with the professional standards normally expected of a CSP.

43. The Authority would expect CSPs to have a number of employees sufficient to carry out the range and scale of its business. The Authority, in determining whether a CSP has sufficient personnel, will take into account the human resources that the CSP may draw upon through other arrangements, e.g. outsourcing, secondments, or other similar arrangements as well as the methods of recruitment to ensure that the licensee employs an adequate number of persons who are fit and proper to perform the duties for which they are employed.
44. A CSP must have appropriate resources in place commensurate with the nature and scale of its activities. The requirement for staff to be suitably qualified and experienced for their responsibilities extends to key roles and those staff who act as officers of client companies must understand their duties under the laws of the jurisdiction in which those client companies are incorporated and carry out their duties in a diligent and proper manner in accordance with internal systems, policies and procedures.
45. Staff must be provided with on-the-job training on the CSP's internal policies, procedures and internal controls. The CSP should ensure that adequate training is provided specific to the roles and responsibilities that staff members perform. Such training should be provided on an ongoing basis, including training on its AML/ATF responsibilities.
46. A CSP shall establish procedures to ensure the adequate supervision of staff in their dealings with clients and the management of client structures. Appropriate records relating to the training, experience and qualifications of staff shall be maintained.

***Schedule 1 Paragraph 5 "Reputation of Bermuda"***

47. The requirements imposed by the sub-paragraphs apply only in terms of creating corporate and partnership vehicles in Bermuda and subsequent transfer of shares in client companies. It is not possible to identify with any precision the kind of activity or kind of person who is liable to bring the reputation of Bermuda into disrepute. The matter will need to be evaluated by each CSP on a case by case basis. Clearly this is an area where a risk-based approach may be justified; however, it needs to be emphasized that the Authority would view any failure in this obligation with utmost gravity. The board or partners of the CSP is (are) ultimately responsible for overall risk management. The Authority would expect licensed CSPs to engage, appoint or designate at management level an individual or individuals that are qualified and skilled at assisting the board in managing risk. This individual or individuals must demonstrate a sound understanding of risk and be able to exercise sound judgment. In so doing this person or persons would be responsible for ensuring that the licensed CSP has developed and implemented effective risk-related internal controls. Effectiveness assessments should be periodic but ongoing and reported to senior management and the board or partners. CSPs are expected to develop and implement policies and procedures to address these obligations; for instance the mitigation of reputational risk, anti-money laundering and anti-terrorist financing risk, tax risk, etc. The mere existence

of policies and procedures does not address the full obligations of the CSP. The board and senior management must create a culture of compliance ensuring staff adhere to the CSP's policies, procedures and controls which have been designed to limit and control the risks that the CSP faces and the risks to the jurisdiction.

48. It needs to be understood that the obligations in paragraph 5(1) are independent of and separate to the obligation in respect of money laundering or terrorist financing, which also are subject to regulation and supervision.

#### **IV. PRINCIPLES RELATING TO THE GRANTING OF LICENCES**

49. To grant a licence under the Act, the Authority needs to be satisfied that all the minimum licensing criteria in Schedule 1 are met. In order to be so satisfied, the applicant and any other relevant parties must first have provided all the appropriate information requested by the Authority in connection with the application. Even where it is satisfied that the criteria are or can be met, the Authority retains a residual discretion not to grant a licence – notably if it sees reason to doubt that the criteria will be met on a continuing basis or if it considers that for any reason there might be significant threats to the public interest or the interests of clients or potential clients. The Authority also considers, in exercising its discretion, whether it is likely that it will receive adequate information from the CSP and relevant connected parties to enable it to monitor the fulfilment of the criteria and to identify potential threats to the CSP's clients.
50. Section 36 of the Act provides for appeals to appeal tribunals against decisions of the Authority regarding the refusal of an application for a licence in addition to restricting or revoking a licence as addressed below. Appeals against the decisions of the tribunal rest with the Supreme Court on questions of law only.

#### **V. POWERS TO OBTAIN INFORMATION AND REPORTS**

51. The Authority's supervisory arrangements for licensed CSPs comprise three principal elements. First, the Authority conducts certain off-site analysis and reviews, based on regular data received from CSPs. This is supplemented by a regular programme of prudential discussions, during which the Authority interviews senior management on a wide range of relevant issues, including recent and current performance, material compliance and control issues, business development and strategy questions. Finally, the Authority conducts routine on-site reviews during which it assesses a CSP's ongoing compliance with aspects of the licensing criteria and, in particular, with paragraph 3(2) of Schedule 1 to the Act. These reviews of compliance are intended to provide insight into the effectiveness of the internal controls in place and the ability of management to identify, monitor and manage key risks arising from the CSP's operations.
52. Prudential supervision involves the receipt and analysis of a variety of regular and ad hoc information from CSPs. The Authority's standard reporting arrangements are kept under review and amended from time to time in light of developments.

53. Much of the information required by the Authority for its supervision of CSPs is provided pursuant to the Authority's statutory powers in the Act to require relevant information and documents. In addition, the Act stipulates certain matters as being subject to specific statutory reporting requirements – notably, the requirement for a CSP to submit a certificate of compliance, signed by an officer, certifying that the CSP has complied with the minimum criteria (as provided for in section 46 of the Act).
54. Section 47 of the Act provides formal powers for the Authority by notice in writing to require from a CSP such information as it may reasonably require for the performance of the Authority's functions under the Act. The section also provides for the Authority to require a CSP to make available a report by its auditor (or by an accountant or other person with relevant professional skill) on any aspect of, or any matter about which the Authority has required or could require the CSP to provide. In the case of reports commissioned under section 47(1)(b), the Authority has agreed that they will wherever possible be commissioned from a CSP's own external auditors. However, in certain circumstances, another professional firm may be used. This would be the case, for example, where a report called for particular technical skills or when the Authority has had previous concerns about the quality or completeness of work conducted by the external auditor.
55. The Authority has also agreed that, as a general rule, it will limit the extent to which it will have recourse to professional reports of this nature. Instead, the Authority's general policy is to use its own staff to assess directly through the on-site work described above the adequacy of a CSP's systems and controls. Nonetheless, where particularly specialised work is required or other special considerations arise, the Authority may commission a professional report under section 47.
56. Section 48 of the Act provides statutory powers for the Authority by written notice to require a CSP to produce relevant documents or information. This power can also be used to obtain relevant documents in the possession of other persons and also to require information or documents from entities related to a CSP. Section 49 of the Act provides the Authority with specific powers to enter the business premises of persons on whom notice under sections 47 or 48 has been served for the purpose of obtaining relevant information or documents. The Authority makes routine use of section 47 and section 48 powers when conducting its on-site review visits to licence holders, in order to deal with any client confidentiality issues that might arise in the course of compliance testing.

## **VI. CONCLUSION**

57. The Principles set out in this statement are of general application, and take account of the wide diversity of CSPs which may be licensed under the Act and of the prospect of institutional and market changes. Nevertheless, there is likely to be a need for the Principles to be revised from time to time. Accordingly, the Authority will publish a statement of any changes to the Principles and will issue revised versions of the Principles as required.



# **BERMUDA MONETARY AUTHORITY**

## **GUIDANCE NOTES**

**CORPORATE SERVICE PROVIDER BUSINESS ACT 2012**

**SEPTEMBER 2014**

FINAL DRAFT



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## I. INTRODUCTION

1. These Guidance Notes have been issued by the Bermuda Monetary Authority (the “Authority”) to provide information for prospective applicants regarding the statutory provisions of the Corporate Service Provider Business Act 2012 (the “Act”) and the supervisory process which the Authority will apply.
2. The Authority’s Guidance is of general application and seeks to take account of the wide diversity of undertakings that may be licensed under the Act. The Guidance will be kept up-to-date and revised versions published from time to time. The Authority cannot provide definitive interpretation of the provisions of the Act, since that is the prerogative of the Courts. However, the Authority, in administering the Act is prepared to offer its own views on the meaning of provisions.
3. It should be noted that the Authority has also published a Statement of Principles, as provided for under the Act. The Statement of Principles provides guidance on the Authority’s approach in interpreting the minimum criteria and in exercising its power to grant, revoke or restrict a licence and in exercising its power to obtain information, reports and to require production of documents.

## II. REGULATORY SCOPE

4. The Act’s requirements are the statutory basis for regulating corporate service provider business in Bermuda. The Act provides for a licensing regime for any person or entity (unless otherwise exempted) engaging in corporate service provider business as defined by the Act, either in or from within Bermuda.
5. A corporate service provider business, as defined by section 2(2) of the Act, is a business that provides corporate services for profit as follows:
  - a. acting as a company formation agent, or agent for the establishment of a partnership;
  - b. providing nominee services, including (without limitation) acting as or providing nominee services;
  - c. providing administrative and secretarial services to companies or partnerships including one or more of the following services—
    - i. providing a registered office;
    - ii. providing an accommodation, correspondence or administrative address;
    - iii. maintaining the books and records of a company or partnership;
    - iv. filing statutory forms, resolutions, returns and notices;
    - v. acting as or fulfilling the function of or arranging for another person to act as or fulfill the function of a person authorised to accept service of process on behalf of a company or partnership or to accept any notices required to be served on it;
    - vi. acting as or fulfilling the function of or arranging for another person to act as or fulfill the function of a director, officer, secretary, alternate, assistant or deputy secretary of a company or an officer of a partnership;

- vii. keeping or making any necessary alteration in the register of members of a company in accordance with section 65 of the Companies Act 1981 (the “Companies Act”);
  - d. the performance of functions in the capacity of resident representative under the Companies Act 1981, Exempted Partnerships Act 1992 and the Overseas Partnerships Act 1995; and
  - e. providing any additional corporate or administrative services as may be specified in regulations.
6. The reference above to a company or partnership is a reference to a company or partnership wherever incorporated or otherwise established and to any similar or equivalent structure or arrangement, howsoever named.
  7. For the purposes of the Act, a person acts as a company or partnership formation agent if he arranges for the registration or formation, or in the case of a company, the sale, transfer or disposal of a company or he provides for the subscribers to the memorandum of association.
  8. An individual shall not be deemed to be in the business of providing corporate services merely by virtue of being a director of one or more companies.
  9. It should be recognised that the Act applies to those persons, partnerships or companies which carry out the above activities as a commercial activity, i.e. services provided to independent third parties for profit. Thus, for example, a corporate service provider which only manages companies within a group of which it is a member is not required to be licensed. Section 9 of the Act permits the exemption of various activities or individuals. An exemption order was issued on XXX.

### **III. APPLICATIONS**

10. It should be noted that compliance with the provisions of the Companies Act is not part of the regulatory oversight of the Authority. Compliance with those obligations is a matter for the Registrar of Companies. It may become relevant to the Authority if issues arise under the Companies Act that are so significant or frequent that they call into question the general competence of the licensed corporate service provider or its officers to operate within the terms of the licence..
11. An application for a licence under the Act may be made by local or exempted companies incorporated under the Companies Act and by Overseas (Permit) Companies authorised by the Minister of Finance under the Companies Act to conduct business in Bermuda. Applications for a licence may be made by Partnerships formed under the Partnership Act 1902 or the Exempted Partnerships Act 1992; and by Overseas Partnerships permitted by the Minister of Finance to conduct business in Bermuda; and by other unincorporated entities or by individuals conducting corporate service provider business, as defined, in or from within Bermuda.

12. In assessing applications, the Authority considers the interaction of a number of factors including: the nature and scale of the corporate service business being carried on; the number of individual relationships involved; the variety and complexity of the responsibilities which are to be undertaken and the resources that the corporate service provider has at its disposal.
13. All applications for a corporate service provider business licence, whether limited or unlimited, must be made using Form CSP 1 and accompanied by such fees as prescribed under the Bermuda Monetary Authority Act 1969 (refer to the “Fees & Penalties” section of the Authority’s website: [www.bma.bm](http://www.bma.bm)). A copy of the application form is in Appendix I of these Guidance Notes and is also available in electronic form on the Authority’s website.
14. Along with Form CSP 1, pursuant to section 10(2) of the Act, an applicant must submit a detailed business plan setting out the nature and scale of the corporate service business that is to be carried on. The details to be included in this plan are set out in Appendix IV. The minimum licensing criteria require controllers/officers to be fit and proper persons; for business to be conducted in a prudent manner; for corporate service provider to observe proper corporate governance policies and processes with the necessary integrity and skill; and for consideration to be given to the international reputation of Bermuda. These minimum licensing criteria are subject to certain minor differences between companies, partnerships and individuals. The Statement of Principles, published under the Act, should be consulted for more details on these differences.
15. The Authority also requires that an applicant submit as appropriate a completed Questionnaire for Shareholder Controller and Questionnaire for Senior Executives (Appendix II and III). Questionnaires are required from each shareholder/controller, director and officer (as defined in sections 2 and 3 of the Act).
16. Anti-Money Laundering and Anti-Terrorist Financing policies and procedures should form part of all applications to ensure compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the “AML Regulations”).
17. The name, contact details and relevant qualifications of the appointed Reporting Officer should be provided in accordance with AML Regulations 16 and 17.
18. In considering an application for a corporate service provider business licence, the Authority may:
  - a. carry out any enquiries that it considers appropriate (e.g.: approaching other regulators);
  - b. ask the applicant, or any specified representative of the applicant, to attend a meeting with the Authority to answer questions and explain any matter the Authority considers relevant to the application;
  - c. seek additional information from the applicant;
  - d. visit the applicant to review proposed premises and files regarding business that it proposes to transfer into the licensed entity;
  - e. request any information furnished by the applicant to be verified in such manner as

- the Authority may specify; and
- f. take into account any other information which it considers relevant in relation to the application.
19. The Authority will not grant a licence unless satisfied that the minimum criteria are met or are capable of being met by the applicant. It must be stressed that even when satisfied the Authority retains discretion to refuse an application.
  20. The Act imposes no time limit within which the Authority must reach a decision on an application. In practice the Authority always seeks to deal as promptly as possible with applications. The time required to complete its initial enquiries may vary depending on the nature of the issues which may arise and the difficulty or otherwise in obtaining any additional information which may be necessary. Generally, the Authority would not expect an application to remain outstanding in excess of three months.

#### **IV. SUPERVISORY PROCESS**

21. Supervision enables and requires judgments to be made about the nature of a corporate service provider's business, the quality of its management, the effectiveness of its controls and compliance, the fairness of its treatment of clients and about its financial viability. In order for the Authority to make these judgments, it needs to keep under review information from a range of sources.
22. The Authority's supervision of corporate service provider businesses involves regular discussions with the senior management of licensed firms, together with receipt and review of statutory certifications and regular compliance visits to the corporate service provider's premises. While the Act provides certain supervisory powers for the Authority to require information from licensed corporate service providers, the Authority expects undertakings to provide voluntarily and routinely the information necessary for its supervision.
23. When concerns arise about the completeness or timeliness of such information, the Authority may decide to utilise its formal powers to require information.
24. The Act also enables the Authority to commission reports on an undertaking's business from an accountant or other person with relevant professional skills. Use of this provision can offer an alternative means of conducting part of the on-site element of supervision which is required. However, this route will normally be used only exceptionally, when the nature of the specific business may call for particular skills in order to conduct a more comprehensive review of the risks involved in the business or where particular concerns or difficulties may have arisen in the Authority's normal on-site work.

#### ***Reporting Requirements***

25. The Act requires that an undertaking holding a corporate service provider business licence annually provide a certificate to the Authority confirming that it has complied with all the statutory requirements, (i.e.: minimum licensing criteria). The form that such certificates should take can be found in Appendix V of these Guidance Notes and is also available in electronic form on the Authority's website.

26. In addition to this reporting, the Authority should be notified immediately of any significant developments relating to an undertaking. Matters that should be reported include, but are not limited to, the following:
- a. any change in key personnel;
  - b. instances of legal action against the undertaking involving the risk of material financial cost or reputational damage;
  - c. requests for information or assistance in relation to ongoing inquiries by a foreign regulatory body; and
  - d. material changes in the business undertaken, including any proposal to undertake non-corporate service provider business.
27. The Authority expects undertakings to be open and proactive in ensuring that the Authority is kept informed of material developments when, or before, they occur. Where the Authority finds reason to doubt the completeness or accuracy of information provided to it in its routine supervision, the Authority will consider the use of the statutory powers in the Act enabling it to require additional documents or information. Depending on the seriousness of the Authority's concerns, it may also have recourse to other information and intervention powers provided in the Act – for example, the appointment of persons to investigate under section 50.
28. Where the Authority in the course of its supervision identifies breaches of the Act or the Regulations, the Authority will consider legal or regulatory action. The Authority would normally seek remedial action by the licensed corporate service provider before resorting to the use of its enforcement powers. In circumstances where such actions fail to remedy identified deficiencies or where the alleged breaches are so serious as to warrant the immediate exercise of enforcement powers, then the Authority would not hesitate to do so.

### ***Off-Site Supervision***

29. Regular prudential meetings provide an opportunity for the Authority to discuss with senior management the development of the corporate service provider's business, including past performance and future strategies for the business. Prudential meetings are scheduled adopting an internal risk-based approach. Ad hoc meetings will also take place to discuss important interim developments or concerns.
30. Topics raised in the discussion are likely to include:
- a. planned changes to business strategies;
  - b. material operational changes, changes in advisors, key staff members, etc.;
  - c. internal control issues;
  - d. disaster recovery planning;
  - e. staff training;
  - f. adequacy of policies and procedures manuals;
  - g. number of clients;
  - h. geographical distribution of those clients (e.g. 5 Clients in Country X); and
  - i. types of business and the client distribution across those types.

31. Prudential discussions can take place at the Authority's offices or at the undertaking's own premises. Alternatively, telephone interviews may be used in some instances.

### ***On-Site Supervision***

32. The purpose of on-site supervision is to enable the Authority to review compliance with policies and procedures (e.g. record keeping), as well as the processes that management have put into place to monitor and control key risks in the business. On-site supervision involves structured visits to an undertaking's offices where, typically, the Authority interviews a range of management and staff and reviews a selection of individual client files. A review of compliance with "know your client" and record keeping requirements relating to the Proceeds of Crime Act forms part of all of the Authority's visits. On-site visits will usually be scheduled on a rolling basis. However, the frequency of on-site visits will also reflect the Authority's assessment of the degree of risk in the business and the effectiveness of the undertaking's personnel, systems and controls for monitoring risk. In exceptional cases (i.e. where the Authority has material concerns) the Authority may conduct a visit at short or even without notice. There will not usually be a need for a separate off-site supervisory discussion in a year when an undertaking is scheduled for an on-site visit.

33. The Authority will normally write to a licensed undertaking approximately four to six weeks ahead of a visit, requesting pre-visit information and providing more details regarding how the Authority intends to structure the visit. The pre-visit information requested would generally include:

- a. current organisation charts or similar information detailing senior management positions and staff in the main business areas, together with any new or amended job descriptions and reporting lines for key personnel;
- b. documented policies and procedures relating to high level control of the corporate service business, including copies of any forms referred to therein;
- c. the risk register and any risk management document or risk statement pertaining to business risk;
- d. the disaster recovery plan and the results of any testing thereof;
- e. a list of the authorised signatories and the corporate resolution or other document which lays out the signing authority for transacting corporate service business;
- f. the most recent business plan;
- g. the staff training log;
- h. a client listing which includes the risk rating, date of incorporation and value of assets under administration for each client.
- i. the Directors and Officers register and the shareholder register of the licence-holder;
- j. A completed response to the Authority's questionnaire on Developments in Business, Staffing & Controls; and
- k. A copy of any client acceptance and/or account opening documentation

34. While the Act provides powers for the Authority to formally require the production and submission of such information as it may reasonably require, on-site visits are normally conducted without recourse to formal powers.

### ***Consolidated Supervision***

35. Although the Authority licenses specific individuals or entities, it also needs to consider relationships with any wider group to which an entity may belong or with other persons closely linked to the corporate service provider, which may have implications for the licensed undertaking. The Authority reviews these aspects in the course of its routine supervision. Where relevant, the Authority may also agree to take on a wider role of consolidated supervisor of a corporate service provider and related institutions.

### ***Reputation of Bermuda (Gatekeeper Role)***

36. The Authority recognises that the corporate service provider holding an unlimited licence serves in the role of Gatekeeper as well as being in the business of serving the interests of their clients. It is also understood and accepted that Gatekeepers serve the broader interests of the public and are instrumental in promoting the jurisdiction. In so doing, corporate service providers in the role of Gatekeepers are expected to develop and promote a culture of good governance. Failure to do so can result in the Gatekeeper's role becoming compromised, particularly where the Gatekeeper and the client have developed a close business relationship. Conflict of interest issues may arise and, if not managed correctly, represent a risk to the corporate service provider's business and ultimately to the jurisdiction. These risks are heightened where the financial well-being of the Gatekeeper's business is heavily reliant upon the client. The Gatekeeper's ability to act independently and objectively is paramount in ensuring that it will carry on its corporate service provider activities in a manner that will not bring the reputation of Bermuda as a first-class international financial centre into disrepute. The Authority expects Gatekeepers in the discharge of their roles and responsibilities to demonstrate high standards of professionalism that extend beyond simply fulfilling the requirements of the Act. An organisational culture must exist which promotes transparency, integrity, ethics, and personal accountability.



**APPENDIX I**

**CORPORATE SERVICE PROVIDER BUSINESS ACT 2012  
APPLICATION FOR A  
CORPORATE SERVICE PROVIDER LICENCE**

**SEPTEMBER 2014**

FINAL DRAFT

## GUIDANCE NOTES

1. This form should be completed by a senior executive or other person responsible for the conduct of the business and having legal capacity to sign on behalf of the corporate service provider applying for licensing (the “Applicant”).
2. Before completing this form, Applicants should refer to the Corporate Service Provider Business Act 2012 (the “Act”), the Corporate Service Provider Business Amendment Act 2014, the Statement of Principles, Guidance Notes, Code of Practice, and relevant papers issued by the Authority.
3. This form must be submitted typed or written in **BLOCK CAPITALS** in ink.
4. The signatory should, on completion of the form, initial each page of the application and any supplementary sheets and sign the declaration on the last page.
5. Completed applications with relevant supporting material should be sent to:-

Licensing and Authorisations Department  
The Bermuda Monetary Authority  
BMA House  
43 Victoria Street  
Hamilton HM 12  
Bermuda

If you require further assistance or have any queries in connection with this application please contact the Licensing and Authorisations Department at 441-295- 5278 or by fax at 441 278-0229. Additional information may also be found on our website at <http://www.bma.bm>

6. If the information accompanying an application is incomplete it will delay the application process. Please ensure all correct documents are attached when submitting an application. The Authority reserves the right to request additional information in support of any application.

## I. DOCUMENTATION TO ACCOMPANY THE APPLICATION

The application must be accompanied by the following items (as applicable):	Document Attached?
<p><b>a. Formation documents:</b> A certified copy of the Applicant’s Memorandum of Association, Bye-laws and Certificate of Incorporation.</p> <p>Partnerships should submit a certified copy of the Partnership Agreement.</p>	<input type="checkbox"/>
<p><b>b. Clients’ Agreements:</b> Copies of any standard corporate service or management agreements, and standard fee agreements that the Applicant uses/intends to use. An assessment will be made of the content and context within which all these documents will be used.</p>	<input type="checkbox"/>
<p><b>c. Questionnaires:</b> CSP Form 2 (Appendix II - Questionnaire for Shareholder Controllers) completed by all shareholder controllers of the company together with CSP Form 3 (Appendix III - Questionnaire for Senior Executives, Controllers and Directors) completed by all individual controllers and officers of the company.</p>	<input type="checkbox"/>
<p><b>d. Business Plan:</b> A statement setting out the nature and scale of the corporate service provider business which is to be carried out or is being carried out by the Applicant, and particulars of the arrangement(s) proposed for the management of that business. (See Appendix IV for Business Plan requirements).</p>	<input type="checkbox"/>
<p><b>e. Group Structure:</b> Applicants forming part of wider groups must provide an up-to-date chart giving full details of the group structure.</p>	<input type="checkbox"/>
<p><b>f. Fees:</b> A cheque representing the appropriate application fee (refer to the “Fees &amp; Penalties” section of the Authority’s website: <a href="http://www.bma.bm">www.bma.bm</a>).</p>	<input type="checkbox"/>
<p><b>g. Policies and Procedures:</b> The Applicant should submit policies and procedures which, at a minimum, should include:</p> <ul style="list-style-type: none"> <li>i. Regulatory Compliance;</li> <li>ii. Corporate Governance;</li> <li>iii. Anti-Money Laundering/Anti- Terrorist Financing;</li> <li>iv. International Sanctions Compliance;</li> <li>v. Disaster Recovery and Business Continuity Plan;</li> <li>vi. Internal Systems and Controls for day-to-day operations; and</li> <li>vii. Risk Management.</li> </ul>	<input type="checkbox"/>
<p><b>h. Insurance:</b> The Applicant should submit evidence of insurance coverage as required in Schedule 1A of the Act</p>	<input type="checkbox"/>

**II. DETAILS OF APPLICANT (complete as appropriate)**

a. Name of Applicant			
b. Date and place of formation of the Applicant			
c. Year in which Applicant commenced corporate service provider activities (if applicable)			
d. Financial year-end of the Applicant			
e. Contact Name		f. Email Address	
g. Fax Number		h. Telephone Number	
i. Address of registered office		j. Address of principal place of business in Bermuda	
k. If there is any other foreign regulatory body with responsibility for the Applicant, or subsidiaries of the Applicant, please provide the particulars below:			
Entity Name	Jurisdiction	Type of Licence & Date of Issue	Regulator Name

1. Scope of corporate service provider business proposed (as defined in Section 2(2) of the Act):(tick as appropriate)	
<ul style="list-style-type: none"> <li>Acting as a company formation agent, or agent for the establishment of a partnership (note if this box is ticked, the Applicant will be considered as applying for an Unlimited Licence).</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>Providing nominee services, including (without limitation) acting as or providing nominee shareholders.</li> </ul>	<input type="checkbox"/>
Administrative and/or secretarial services such as:	
<ul style="list-style-type: none"> <li>providing registered office</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>providing an accommodation, correspondence or administrative address;</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>maintaining the books and records of a company or partnership;</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>filing statutory forms, resolutions, returns and notices;</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a person authorised to accept service of process on behalf of a company or partnership or to accept any notices required to be served on it;</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>acting as or fulfilling the function of, or arranging for another person to act as or fulfil the function of a director, officer, secretary, alternate, assistant or deputy secretary of a company or an officer of a partnership;</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>keeping or making any necessary alteration in the register of members of a company in accordance with section 65 of the Companies Act 1981(note if this box is ticked, the Applicant will be considered as applying for an Unlimited Licence);</li> </ul>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>the performance of functions in the capacity of resident representative under the Companies Act 1981, Exempted Partnerships Act 1992 and the Overseas Partnerships Act 1995;</li> </ul>	<input type="checkbox"/>
Other corporate or administrative services:	<input type="checkbox"/>

m. Where the Applicant is already operating please provide the number of clients that currently use the services in the table below. ( <b>Note:</b> It is understood that some clients will use multiple services and therefore will be included more than once.)	
<b>Type of Service Provided</b>	<b>Number of Clients</b>
Company formation agent, or agent for the establishment of a partnership	
Nominee services	
Administrative and/or secretarial services along with the provision of director(s) or officers	
Director services only (whether executive or non-executive)	
Administrative and/or secretarial services only	
Resident Representative services	
Keeping or making necessary alterations to the register of members	
Other corporate or administrative services not defined above, please list:	
n. Total number of clients in the year immediately preceding the date of application (applicable to an Applicant already operating as a corporate service provider):	
o. Number of proposed/anticipated clients in first three years of licensing (applicable to a new Applicant):	
p. Where the Applicant is already operating, please provide number of clients that have director, officer, partner or shareholder who is a Politically Exposed Person (“PEP”):	
q. Where the Applicant is already operating, please provide the geographical breakdown of client base in terms of the number of client entities formed under the laws of any of the following countries: ( <b>Note:</b> Where an entity has been migrated, note which country’s laws now apply to that company.)	
<b>Location</b>	<b>Number of client entities</b>
Bermuda	
BVI/ Cayman	

Other Caribbean	
Europe (Excluding UK)	
<b>Location</b>	<b>Number of client entities</b>
UK, Jersey, Guernsey & Isle of Man	
US/ Canada	
Central America & Mexico	
South America	
Middle East	
Asia	
Africa	
Australia/ New Zealand	

r. Where the Applicant is already operating, please provide information on the primary activities of the client entities administered:

<b>Activity (e.g. investment holding, aircraft registration)</b>	<b>Number of Client Entities</b>

**III. OPERATIONS OF THE APPLICANT**

a. List all Directors within the meaning of Section 3 of the Act. Non-executive Directors (if any) are to be identified by an asterisk.

b. List all Controllers within the meaning of Section 3 of the Act. Controllers are to indicate whether they are individual or corporate. The number and type of shares held should be indicated.

c. The names and positions in the undertaking of the person(s) who effectively direct(s) the business for the purposes of paragraph 1A (2)(a) of Schedule 1 of the Act.

d. Please identify the Money Laundering Reporting Officer. Additionally, if the Applicant has an identified Compliance Officer or consultant responsible for regulatory compliance please list.



#### IV. INSURANCE COVER

a. Indicate below what types of insurance cover the Applicant maintains:		
Type of Insurance (e.g. Directors and Officers Liability)	Limit	Deductible
b. Has any application for insurance by the Applicant or any predecessors in business ever been refused? If yes, please explain.		
c. Insurer Detail - Name(s) and address(es) of Insurer(s):		

## V. PRIOR ISSUES

If the answer to any of the questions below is yes, please give full particulars in the space provided.

	Yes/No
a. Has the Applicant ever applied for and been refused a licence or an equivalent authorisation or registration to conduct corporate service provider, banking, investment, insurance, money service or trust business in Bermuda or elsewhere?	
b. Has the Applicant failed to satisfy a judgement debt under a court order in Bermuda or elsewhere within a year of the making of the order?	
c. Has the Applicant made any compromise or arrangement with its creditors or otherwise failed to satisfy creditors in full?	

	Yes/No
<p>d. Has the Applicant ever had a receiver appointed over any of its property in Bermuda, or has the substantial equivalent of any such person been appointed in any other jurisdiction?</p>	
<p>e. Has the Applicant ever had a petition for an administration order or the substantial equivalent of such a petition served on it in any jurisdiction?</p>	
<p>f. Has the Applicant ever had a notice of resolution for liquidation in Bermuda, or had the substantial equivalent of such a notice given in any other jurisdiction?</p>	
<p>g. Has an inspector or other authorised officer of any government department or agency, professional association or other regulatory body appointed under any Bermuda law (e.g. the Companies Act 1981) or equivalent overseas enactment, ever investigated the affairs of the Applicant or any related company?</p>	

	Yes/No
<p>h. Has the Applicant or any related company been required to produce books or records within Bermuda or elsewhere subject to a court order at the instigation of any supervisory or regulatory authority?</p>	
<p>i. Has the Applicant or any related company or partnership ever been censured, prosecuted, or warned as to future conduct, disciplined or publicly criticized by, or made the subject of a court order at the instigation of any supervisory or regulatory authority?</p>	
<p>j. Has the Applicant or any related company or partnership ever been refused entry in Bermuda or elsewhere to any professional body or trade association concerned with banking, trust, investments or other financial services?</p>	
<p>k. Is the Applicant or any related entity engaged or does it expect to be engaged in Bermuda or elsewhere in any litigation which may have a material effect on the resources of the Applicant?</p>	

## DECLARATION

This declaration must be completed by the Applicant in block capitals or typed.

I, (full name and address)

confirm that I have read and understand the provisions of the Corporate Service Provider Business Act 2012 (the “Act”) and I declare that the business in respect of which this application is made will be conducted in accordance with the provisions of the Act and Code of Practice and any relevant Regulations issued by the Authority.

I declare that the particulars supplied in the application are true to the best of my knowledge and belief.

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Signature on behalf of the Applicant

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Position

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Date

**WARNING:** Pursuant to Section 60 of the Corporate Service Provider Business Act 2012. Any person who, for any purposes of this Act - issues a document, or supplies information, which is false or misleading in a material respect; or signs a document which is false or misleading in a material respect; or takes part in the preparation or issue of a document, or the supplying of information, which is false in a material respect, commits an offence. A person who commits an offence under subsection (1) is liable - on summary conviction to a fine of \$25,000 or to imprisonment for two years or to both such fine and imprisonment; on conviction on indictment to a fine of \$50,000 or to imprisonment for four years or to both such fine and imprisonment.

## **QUESTIONNAIRE FOR SHAREHOLDER CONTROLLERS**

*Pursuant to section 22 of the Corporate Service Provider Business Act 2012*

### **APPENDIX II**

#### **NOTES FOR COMPLETION**

- 1. Controllors (See Appendix A, Note 1) who are individuals, rather than companies (including but not limited to companies and partnerships), should not complete this form. They should complete Form CSP3 instead.**
- 2. This form must be completed by the Chief Executive of the intended company Controller, another person responsible for the conduct of the business of the company or having legal capacity to sign on behalf of the company.**
- 3. This form must be submitted typed or written in ink BLOCK CAPITALS.**
- 4. The signatory should, on completion of the form, initial each page of the questionnaire and any supplementary sheets and sign the declaration on the last page.**
- 5. After completing this form please forward it with all supporting documents to the Licensing and Authorisations Department, Bermuda Monetary Authority, BMA House, 43 Victoria Street, Hamilton HM 12, Bermuda. Enclosures must be clearly identified.**
- 6. If you have any questions please contact the Licensing and Authorisations Department at 295-5278 or by fax at 278-0229. You may also visit the Bermuda Monetary Authority's website at <http://www.bma.bm>**

Contact Name \_\_\_\_\_ Telephone Number \_\_\_\_\_  
(Please Print)

1. Name of corporate service provider (“CSP”) to which this questionnaire relates.
2. Please state the name(s) of the Controller including the corporate name and any business name(s) or secondary names (such as those allowed under section 10A of the Companies Act 1981.)
3. Please state the percentage interest held or to be acquired in the CSP, along with the type of shares and voting rights attached to the shares held or to be acquired.
4. Description of the Controller’s business.
5. Any former name(s) under which the Controller has been registered or has traded.
6. Country and date of incorporation or formation of the Controller.
7.
  - (a) Registered address of the Head Office of the Controller and
  - (b) Principal place of business if different.

8. Name(s) and address(es) of the Controller's principal bankers within the last 10 years.
9. Names and positions of all directors of the Controller.
10. Names of all controllers of the Controller, indicating in each case the relevant category of controller involved.
11. How many shares in the CSP are registered in the name of the Controller or a related company? (See Appendix A Note 2) Give name(s) in which shares are registered and class of shares involved.
12. How many shares in the CSP, other than shares registered in the name of the Controller or a related company (See Appendix A Note 2) is the Controller or any related company beneficially interested?
13. Does the Controller or any related company (See Appendix A Note 2) hold any shares in the CSP as trustee or nominee? If so, give full particulars.
14. Are any of the shares in the CSP mentioned in answer to Question 11, 12 or 13 equitably or legally charged or pledged to any party? If so, give full particulars.



15. What proportion of the voting power at any general meeting of the CSP (or of another institution of which the CSP is a subsidiary) is the Controller and any related company (See Appendix A Note 2) entitled to exercise or control the exercise of?
16. Name(s) of any company licensed for financial services business other than the CSP to which this form applies, of which the Controller is also a controller, indicating the percentage interest held along with the type of shares and voting rights attached to the shares held.
17. Please 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.
18. Does the Controller or any related company (See Appendix A Note 2) hold, or has it ever held, any authorisation or exemption from a supervisory or regulatory body to carry on any business in Bermuda or elsewhere? If so, give full particulars.
19. Has any such authorisation been revoked, restricted in a manner similar to a restriction under section 17 of the Act, or surrendered? If so, give full particulars.

20. Has the Controller or any related company (See Appendix A Note 2) ever applied for any authorisation or exemption from a supervisory or regulatory body to carry on business in Bermuda or elsewhere other than an authorisation already mentioned in answer to Question 18? If so, give particulars. If any such application was, for any reason, refused or withdrawn after it was made, give full particulars.

21. Has the Controller or any related company (See Appendix A Note 2) within the last 10 years: (if any of the following questions are answered in the affirmative, give full particulars).

- (a) failed to satisfy a judgement debt under a court order in Bermuda or elsewhere within a year of the making of the order?
- (b) made any compromise or arrangement with its creditors or otherwise failed to satisfy creditors in full?
- (c) had a receiver appointed over any of its property in Bermuda, or has the substantial equivalent of any such person been appointed in any other jurisdiction. If so, give particulars, including whether the receiver or equivalent is still acting under the appointment?
- (d) had a petition for an administration order or the substantial equivalent of such a petition served on it in any other jurisdiction?
- (e) had a notice of resolution for voluntary liquidation in Bermuda, or had the substantial equivalent of such a notice given in any other jurisdiction?

- (f) had a petition served in Bermuda for the compulsory liquidation of the Controller or any related company (See Appendix A Note 2) or had the substantial equivalent of such a petition served on it in any other jurisdiction?
22. Is an inspector or other authorised officer of any government department or agency, professional association or other regulatory body appointed under any Bermuda law (e.g. the Companies Act 1981, the Proceeds of Crime Act 1997) or equivalent overseas enactment, investigating the affairs of the Controller or any related company (See Appendix A Note 2), or has such an investigation ever previously taken place? If so, give full particulars.
23. Has the Controller or any related company (See Appendix A Note 2) been required to produce books or records pursuant to section 110 of the Companies Act 1981, section 40 of the Banks and Deposit Companies Act 1999, section 45 of the Investment Business Act 2003 section 37 of the Trusts (Regulation of Trust Business) Act 2001 or any equivalent overseas legislation? If so, give full particulars.
24. Has the Controller or any related company (See Appendix A Note 2) ever been censured, prosecuted, or warned as to future conduct, disciplined or publicly criticised by, or made the subject of a court order at the instigation of any supervisory or regulatory authority? If so, give full particulars.
25. Has the Controller or any related company (See Appendix A Note 2) ever been refused entry in Bermuda or elsewhere to any professional body or trade association concerned with banking, trust, money service, corporate or financial services? If so, give full particulars.

26. Is the Controller or any related company (See Appendix A Note 2) engaged or does it expect to be engaged in Bermuda or elsewhere in any litigation which may have a material effect on the resources of the Controller or the institution? If so, give full particulars.

27. Please provide any other information which may assist the Authority in reaching a decision.

FINAL DRAFT

**DECLARATION**

*I certify that I have read the Act, including the provisions relating to Controllers of applicant and existing licensed institutions and to objections to Controllers in sections 22-26 and that the information given in answer to the questions above is complete and accurate to the best of my knowledge, information and belief. There are no other facts relevant to this application of which the Bermuda Monetary Authority should be aware.*

*I undertake to inform the Bermuda Monetary Authority of any material changes, which may arise at any time and in any event no later than 21 days from the day that the changes come to my attention.*

*I am aware that, under the terms of section 45 of the Corporate Service Provider Act 2012, an authorised undertaking must give written notice to the Authority of the fact that any person has become or ceased to be a Controller of the company within a period of 14 days of the relevant fact coming to the attention of the undertaking.*

Name \_\_\_\_\_ Position held \_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

## *Appendix A*

### NOTE 1

#### **Meaning of "director", "controller", "majority shareholder controller", "senior executive", "chief executive" and "associate"**

In the Act, "director", "controller", "senior executive" and "associate" are defined as follows:

2. **"Director"** in relation to an undertaking—
  - a) includes an alternate director and any person who occupies the position of director, by whatever name called; and
  - b) where it is used in subsections (6) and (7), includes a partner of a partnership.
3. **"Controller"** in relation to an undertaking, means—
  - a) a managing director of the undertaking or of another company of which the undertaking is a subsidiary;
  - b) in the case of an undertaking which is a partnership, a partner;
  - c) in the case of an undertaking which is neither a company nor a partnership, a sole proprietor;
  - d) a chief executive of the undertaking or of another company of which the undertaking is a subsidiary;
  - e) a person who satisfies the requirements of this paragraph;
  - f) and a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which the undertaking is a subsidiary or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.
4. For the purpose of subsection (3)(e), a person is a shareholder controller in relation to an undertaking if, either alone or with any associate or associates—
  - a) he holds 10% or more of the shares in the undertaking or another company of which it is a subsidiary company;
  - b) he is entitled to exercise or control the exercise of 10% or more of the voting power at any general meeting of the undertaking or another company of which it is such a subsidiary; or
  - c) he is able to exercise a significant influence over the management of the undertaking or another company of which the undertaking is such a subsidiary by virtue of—
    - i. a holding of shares in; or
    - ii. 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.
5. In this Act **"majority shareholder controller"** means a shareholder controller in

whose case the percentage referred to in subsection 4(a) or (b) is 50 or more.

6. “**Senior executive**”, in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking—
  - a) exercises managerial functions; or
  - b) is responsible for maintaining accounts or other records of the undertaking.
7. In this section “**chief executive**” in relation to an undertaking, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.
8. In this Act “**associate**” in relation to a person entitled to exercise or control the exercise of voting power in a company, or in relation to a person holding shares in a company, means—
  - a. if that person is an individual—
    - i. the spouse, child, step-child or parent of that person;
    - ii. the trustees of any settlement under which that person has a life interest in possession;
    - iii. any company of which that person is a director;
    - iv. any person who is an employee or partner of that person;
  - b. if that person is a company—
    - i. any director of that company;
    - ii. any subsidiary of that company;
    - iii. any director or employee of any such subsidiary company;
  - c. if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

## **NOTE 2**

### **Meaning of “related company”**

A “related company” in relation to an undertaking or the parent company of such undertaking, means a company (other than a subsidiary company) in which the undertaking or the parent company, as the case may be, holds a qualifying capital interest.

A qualifying capital interest means an interest in relevant shares of the company which the undertaking or parent company holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

A holding of 20 per cent or more of the nominal value of the relevant shares of a company shall be presumed to be a qualifying capital interest unless the contrary is shown.

Relevant shares means shares comprised in the equity share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the company.

Equity share capital means the issued share capital of a company excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.



**QUESTIONNAIRE FOR SENIOR EXECUTIVES,  
CONTROLLERS and DIRECTORS**

*Pursuant to sections 22 and 45 of the Corporate Service Providers Business Act 2012*

**APPENDIX III**

**NOTES FOR COMPLETION**

1. This form must be completed by each intended senior executive, chief executive, controller, director, and any other person(s) by whatever name called, who is to have significant influence over the administration of the company.
2. This form must be submitted typed or written in ink **BLOCK CAPITALS**. The individual should, on completion of the form, initial each page of the questionnaire and any supplementary sheets and sign the declaration on the last page.
3. Any certificates or certified copies of certificates, evidencing professional qualifications or membership of any professional bodies should accompany the submission of this questionnaire.
4. After completing this form please forward it with all supporting documents to the Licensing and Authorisation Department, Bermuda Monetary Authority, BMA House, 43 Victoria Street, Hamilton HM 12, Bermuda. Enclosures must be clearly identified.
5. If you have any questions please contact the Licensing and Authorisations Department at 295-5278 or by fax at 278-0229. You may also visit the Bermuda Monetary Authority's website at <http://www.bma.bm>.

Contact Name \_\_\_\_\_ Telephone Number \_\_\_\_\_  
(Please Print)

1. Name of relevant corporate service provider (the “CSP”)

2. Surname

3. Maiden Name

4. Forename(s)

5. Any previous name(s) by which you have been known

6. Date of Birth

Place of Birth

Citizenship (Nationality)

Previous Nationality (include process and dates by which naturalisation was changed)

7. Details of Passport(s), including number and date and place of issue.

8. Details of any professional or other relevant qualifications and the year in which they were obtained (including copies of certificates, degrees etc.)

9. Details of current membership of any relevant professional bodies, their address(es) and the year of admission.
  
10. Beginning with your present employment, list the full name and address of each employer during the last 10 years, the nature of the business, the position held and the relevant dates. (The BMA reserves the right to seek information from previous employers. Please, therefore, give **complete** details using a separate sheet if necessary).
  
11. Please state in what capacity you are completing this form, i.e. as a current or prospective director, controller, senior executive or chief executive or any combination of these (See Appendix A Note 1). Please state your full title and describe the particular duties and responsibilities attaching to the position(s), which you hold or will hold. If you are completing this form in the capacity of director indicate whether, in your position as director, you have or will have executive responsibility for the management of the CSP's business.
  
12. If you are completing this form as a current or prospective controller of the CSP, indicate by the category of controller involved (See Appendix A, Note 1).
  
13. In carrying out your duties will you be acting on the directions or instructions of any other individual or entity? If so, give full particulars.
  
  
  
  
  
  
  
  
  
  
14. Do you, in your private capacity, or does any related company or associate (See Appendix A, Note 1) undertake business with the CSP? If so, give full particulars.

15. What companies (other than the CSP) are you now a director, controller or senior executive? Give relevant dates and if you are a controller of any such companies, indicate the nature of that control.
16. What companies (other than the CSP and those listed in answer to Question 15) have you been a director, controller or senior executive at any time during the last 10 years? Give relevant dates.
17. How many shares in the CSP (or another company of which the CSP is a subsidiary) are registered in your name, the name of a related company or associate? If applicable, give name(s) in which shares are registered and class of shares involved.
18. How many shares in the CSP or another company of which the CSP is a subsidiary, other than shares registered in your name or that of a related company or associate, are you or any related company or associate beneficially interested?
19. Do you or does any related company or associate hold any shares in the CSP as trustee or nominee? If so, give full particulars.

20. Are any of the shares mentioned in answer to Questions 19, 20 and 21 equitably or legally charged or pledged to any party? If so, give full particulars.

21. What proportion of the voting power at any general meeting of the CSP (or of another entity of which it is a subsidiary) are you or any related company entitled to exercise or control the exercise of?

22. Please answer **Yes** or **No** to the following questions.

a) Have you at any time been a director, controller or senior executive of any entity whose licence to conduct deposit-taking, trust, corporate services, money services or other financial business has during the period of your involvement or within 12 months thereafter, been revoked, cancelled, restricted in a similar manner to a restriction under section 14 of the Act, suspended or surrendered under any law? If “Yes”, give full particulars.

b) Have you at any time been a director, controller or senior executive of any entity whose application for a licence to conduct banking, deposit-taking or other financial business in Bermuda or elsewhere has during the period of your involvement or within 12 months thereafter, been refused or withdrawn? If “Yes”, give full particulars.

- c) Have you at any time been convicted of any offence by any court, in Bermuda or elsewhere? If so, give full particulars of the court by which you were convicted, the offence, the penalty imposed and the date of conviction. (Exclude **1.** Any offence committed when you were under 18 years unless it was committed within the last 10 years; **2.** Any road traffic offence; **3** Any offence that, for the purpose of the Rehabilitation of Offenders Act 1977 should be treated as spent).
- d) Have you, in Bermuda or elsewhere, been censured, disciplined or criticised by any professional body to which you belong or have belonged or made the subject of a court order at the instigation of any regulatory authority or have you ever held a practicing certificate subject to conditions? If “Yes”, give full particulars.
- e) Have you, or has any company, partnership or unincorporated entity with which you are, or have been associated as a director, controller, senior executive, or chief executive, by reason of any matters relating to it at a time when you were so associated, been the subject of an investigation, in Bermuda or elsewhere, by a governmental, professional or other regulatory body? If “Yes”, give full particulars.

- f) Have you incurred a judgement debt under an order of a court in Bermuda or elsewhere or made any compromise arrangement with your creditors within the last 10 years? If “Yes”, give full particulars.
- g) Have you in Bermuda or elsewhere, been dismissed from any office or employment or barred from entry to any profession or occupation? If “Yes”, give full particulars.
- h) Has any company, partnership or unincorporated entity with which you were associated as a director, controller or senior executive in Bermuda or elsewhere been wound up or otherwise made any compromise or arrangement with its creditors or ceased trading, either when you were associated with it or within one year after you ceased to be associated with it? Has anything analogous to any of these events occurred under the laws of any other jurisdiction? If “Yes”, give full particulars.
- i) Have you been concerned with the management or conduct of affairs of any entity which, by reason of any matter relating to it at a time when you were so concerned, has been censured, warned as to future conduct, disciplined or publicly criticised by or made the subject to a court order at the instigation of any regulatory authority in Bermuda or elsewhere? If “Yes”, give full particulars.

j) Have you, in connection with the formation or management of any body corporate, partnership or unincorporated entity, been adjudged by a court in Bermuda or elsewhere to have civil liability for any fraud, misfeasance or other misconduct by you towards such a body or company or towards any members thereof? If “Yes”, give full particulars.

k) Are you presently or do you expect to be engaged in any litigation in Bermuda or elsewhere, other than in a professional capacity? If “Yes”, give full particulars.

I have/have not attached with this application further information and documentation.



**DECLARATION**

*I certify that the information given in answer to the questions above is complete and accurate to the best of my knowledge, information and belief and that there are no other relevant facts of which the Authority should be aware.*

*I undertake to inform the Authority of any changes material to the application, which arises while the Authority is considering the application.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

FINAL DRAFT

## *Appendix A*

### NOTE 1

#### **Meaning of "director", "controller", "majority shareholder controller", "senior executive", "chief executive" and "associate"**

In the Act, "director", "controller", "senior executive" and "associate" are defined as follows:

2. **"Director"** in relation to an undertaking—
  - a) includes an alternate director and any person who occupies the position of director, by whatever name called; and
  - b) where it is used in subsections (6) and (7), includes a partner of a partnership.
3. **"Controller"** in relation to an undertaking, means—
  - a) a managing director of the undertaking or of another company of which the undertaking is a subsidiary;
  - b) in the case of an undertaking which is a partnership, a partner;
  - c) in the case of an undertaking which is neither a company nor a partnership, a sole proprietor;
  - d) a chief executive of the undertaking or of another company of which the undertaking is a subsidiary;
  - e) a person who satisfies the requirements of this paragraph;
  - f) and a person in accordance with whose directions or instructions the directors of the undertaking or of another company of which the undertaking is a subsidiary or persons who are controllers of the undertaking by virtue of paragraph (e) (or any of them) are accustomed to act.
4. For the purpose of subsection (3)(e), a person is a shareholder controller in relation to an undertaking if, either alone or with any associate or associates—
  - a) he holds 10% or more of the shares in the undertaking or another company of which it is a subsidiary company;
  - b) he is entitled to exercise or control the exercise of 10% or more of the voting power at any general meeting of the undertaking or another company of which it is such a subsidiary; or
  - c) he is able to exercise a significant influence over the management of the undertaking or another company of which the undertaking is such a subsidiary by virtue of -
    - i. a holding of shares in; or
    - ii. 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.

5. In this Act "**majority shareholder controller**" means a shareholder controller in whose case the percentage referred to in subsection 4(a) or (b) is 50 or more.
6. "**Senior executive**", in relation to an undertaking, means a person (other than a chief executive) who, under the immediate authority of a director or chief executive of the undertaking -
- a) exercises managerial functions; or
  - b) is responsible for maintaining accounts or other records of the undertaking.
7. In this section "**chief executive**" in relation to an undertaking, means a person who, either alone or jointly with one or more persons, is responsible under the immediate authority of the directors for the conduct of the business of the undertaking.
8. In this Act "**associate**" in relation to a person entitled to exercise or control the exercise of voting power in a company, or in relation to a person holding shares in a company, means -
- a) if that person is an individual—
    - i. the spouse, child, step-child or parent of that person;
    - ii. the trustees of any settlement under which that person has a life interest in possession;
    - iii. any company of which that person is a director;
    - iv. any person who is an employee or partner of that person;
  - b) if that person is a company—
    - i. any director of that company;
    - ii. any subsidiary of that company;
    - iii. any director or employee of any such subsidiary company;
  - c) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they undertake to act together in exercising their voting power in relation to it, that other person.

## **NOTE 2**

### **Meaning of “related company”**

A “related company” in relation to an undertaking or the parent company of such undertaking, means a company (other than a subsidiary company) in which the undertaking or the parent company, as the case may be, holds a qualifying capital interest.

A qualifying capital interest means an interest in relevant shares of the company which the undertaking or parent company holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest.

A holding of 20 per cent or more of the nominal value of the relevant shares of a company shall be presumed to be a qualifying capital interest unless the contrary is shown.

Relevant shares means shares comprised in the equity share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the company.

Equity share capital means the issued share capital of a company excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

## **APPENDIX IV**

### **BUSINESS PLAN**

Pursuant to Section 10(2)(a) of the Corporate Service Provider Business Act 2012

Provide a full statement setting out the nature and scale of the corporate service provider business which is to be conducted by the Applicant and full particulars of the arrangements proposed for the management and operation of that business.

Details should cover the first three years of operation (or previous three years for existing corporate service providers) and must include, but not necessarily be restricted to, the following:

- a. Aims and objectives;
- b. Sources of business and nature and scale of business expected. Provide details as to type of business;
- c. Staffing resources. Must include particulars on management structure inclusive of mind and management; organisational structure; experience and expertise of staff; professional qualifications/legal expertise; staff training plans; including any training undertaken or provided to staff by the Compliance Officer/Money Laundering Reporting Officer;
- d. A chart illustrating the relationship of the Applicant to its parent, subsidiaries and affiliates (if applicable);
- e. Proposed systems for internal audit/compliance arrangements;
- f. Principal place of business (leasehold/freehold);
- g. Outsourcing or insourcing arrangements; and
- h. Proposals to delegate any responsibilities to any other person and/or entity. Include information on the names and addresses of the person(s) and/or entity(ies) and the types of functions they will be performing.

**APPENDIX V**

**CERTIFICATE OF COMPLIANCE**

PURSUANT TO SECTION 46 OF THE  
CORPORATE SERVICE PROVIDER BUSINESS ACT 2012

With reference to the corporate service provider business licence (limited or unlimited – delete appropriate) granted to:

.....

under the Corporate Service Provider Business Act 2012 (the ‘Act’)

I/We.....  
[name(s) and positions(s)]

As officer(s) of the undertaking hereby confirm that, during the financial year ended ..... the business of the licence holder has, to the best of my /our knowledge and belief, been conducted in accordance with the minimum licensing criteria in the Act and the relevant provisions of the Codes of Practice.

Signature(s)..... Date(s) .....

**NOTE:** Every licenced undertaking shall, within 4 months from the end of its financial year, deliver to the Authority a certificate of compliance. Any undertaking failing to deliver a certificate as required is liable to a civil penalty not exceeding \$5,000 for each week or part of a week that the undertaking is in default pursuant to section 46(2) of the Act.