



BERMUDA MONETARY AUTHORITY

CODE OF PRACTICE

MONEY SERVICE BUSINESS ACT 2016

DECEMBER 2016

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INTRODUCTION

This Code of Practice (the “Code”) is made pursuant to section 7 of the Money Service Business Act 2016 (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 money service 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 money service business shall in the conduct of its business have regard to any Code of Practice issued by the Authority.
3. The Authority expects money service businesses 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 money service business and take account of the comments and representations of the money service business as well as, where relevant, its 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.

“money service business” means the business of providing any or all of the following money service business activities to the general public—

- (a) money transmission services;
- (b) cashing cheques which are made payable to customers and guaranteeing cheques;
- (c) issuing, selling or redeeming drafts, money orders or traveller’s cheques for cash;
- (d) payment service business;
- (e) operating a bureau de change whereby cash in one currency is exchanged for cash in another currency.

III. PROPORTIONALITY PRINCIPLE

5. The Authority appreciates that money service businesses have varying risk profiles arising from the nature, scale, and complexity of their business, and that those money service businesses 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 money service business' 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 money service business 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 money service business or characteristics of the service provided (e.g. money transmission versus a full bill payment system, 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 particular money service business taking into account the money service business' nature, scale, and complexity and the Authority's prudential objectives.
8. The proportionality principle, discussed above, is applicable to all sections of the Code regardless of whether the principle is explicitly mentioned.

IV. APPLICATION

9. This Code applies to all holders of money service business licences granted under section 11 of the Act. The Code is of general application, and seeks to take account of the wide diversity of money service businesses 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.
10. Every money service business 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 money service business' obligations under company or common law. Failure on the part of a licensed money service business 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 2 of Schedule 1

of the Act. Persistent failure by a licensed money service business to abide by the provisions of the Code is likely to result in the Authority taking formal action.

V. CLIENT DUE DILIGENCE

11. Licensed money service businesses 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 money service businesses 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.
12. The duty of vigilance includes verification; recognition and reporting of suspicious transactions; keeping of “know your client records” and delivering the appropriate Anti Money Laundering training to all staff. The licensed company must ensure that its procedures enable it to determine and verify the true identity of customers requesting their services. Copies of photo identification such as a driver’s licence or passport should be retained in compliance with the Proceeds of Crime Act 1997 and relevant guidance notes and codes. The Authority encourages companies to put in place appropriate procedures to minimise the risk of abuse especially, where appropriate, standard rules with regard to maximum individual transaction sizes that may be collected for its different money services and strict requirements around their ability to collate and aggregate individual transactions that may form part of a larger transaction and may be intended to avoid standard limits or reporting requirements.

VI. INTEGRITY AND ETHICS

13. A licensed money service business 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 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 money service business should always act with due care, skill and diligence.

VII. DISCLOSURE OF INFORMATION

14. Licensed money service businesses should observe any obligation of confidentiality that may apply to information communicated by persons concerned with clients (e.g. shareholders, directors, officers, senior executive, partner, associate and accountants) unless the licensed money service business 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.

15. Employees, partners, officers, directors and other persons who have access to confidential information of the licensed money service business and the client structures it administers should be advised in writing upon their engagement and reminded periodically thereafter by the licensed money service business of confidentiality issues.

VIII. INTERNAL MANAGEMENT CONTROLS

Prompt and Timely Execution

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

Segregation of Client Monies

17. Section 11 (3) of the Act directs a licensed money service business to ensure that any monies or assets belonging to clients are kept segregated from the assets of their business. For the purpose of this section it is acceptable for a licensed money service business to hold client monies while processing a transaction, although this is expected to be for a brief period only; and following the completion of the transaction those monies would no longer be considered client monies. Where a transaction cannot be completed immediately or may be delayed until the next business day, monies belonging to clients should be kept in separate bank accounts, clearly labelled as client money. The objective is to ensure that, in the event of the insolvency of the money service business, client money is protected from the threat posed by insolvency or liquidation of the licensed entity.

Competent and Effective Management

18. A licensed money service business 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 money service business are responsible for the proper exercise of their powers and ensuring that the licensed money service business has proper policies, procedures and other arrangements in place. They may delegate the administration of the licensed money service business' 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, a licensed money service business should have regard to any services agreement, applicable laws and any internal procedures as appropriate.

Accounting and other Record Keeping

21. Licensed money service businesses 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 for the licensed money service business in accordance with the laws applicable to it.

Adequate Personnel

22. A licensed money service business must have available suitable numbers of staff who are appropriately trained and competent to discharge its services 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 money service business 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 money service business to have in place a documented business interruption recovery plan, dealing with all of its critical functions.

Fees and Remuneration

24. A licensed money service business is expected to exhibit proper transparency in its dealings with clients and potential clients and to act at all times with due skill, care and diligence. Terms of business, including fees and commissions for its different services should be prominently displayed, and any changes promptly brought to the attention of customers to ensure that there is no misunderstanding with regard to transaction charges and other fees.

Client Agreements

25. To ensure clients are dealt with fairly and are informed, money service businesses should discuss terms of business with each prospective client for payment service business, as

defined in section 2 of the Act, 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 money service business is licensed by the Authority including the type of licence issued.

Client Complaint Procedures

- 26. A licensed money service business 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 money service business' response and any action taken as a result should also be made in writing and maintained.

Risk Management Framework

- 27. Risk identification and management forms a part of any business and as such the Authority expects the licensed money service business to have an appropriate risk control framework in place for the benefit of its stakeholders.
- 28. A licensed money service business 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

- 29. A licensed money service business should ensure that its status as a licensed undertaking is disclosed in all advertisements and correspondence. The following wording is suggested:

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

X. COOPERATION WITH REGULATORY AUTHORITIES

- 30. A licensed money service business is expected to deal openly and in a spirit of cooperation with the Authority and any other relevant regulatory authorities. Licensed money service businesses should alert the Authority to any proposal to extend their business materially. Licensed money service businesses 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 money service businesses to sections 12, 25, 48, and 57 of the Act.)