



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTES

CORPORATE SERVICE PROVIDER BUSINESS ACT 2012

INFORMATION FOR PROSPECTIVE APPLICANTS

MARCH 2020

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APPENDICES to this Guidance Note can be found on the BMA website at:
<https://www.bma.bm/document-centre/reporting-forms-and-guidelines-csp>

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.
3. It should be noted that the Authority has also published a Statement of Principles and a Code of Practice, 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, exercise its power to obtain information and reports, and require production of documents. The Code of Practice provides guidance on the duties, requirements, procedures, standards and sound principles to be observed by persons carrying on corporate service provider business. Copies of both these documents can be found on the Authority's website (www.bma.bm).

II. REGULATORY SCOPE

4. The Act's requirements are the statutory basis for regulating corporate service provider business in Bermuda. The Act provides a licensing regime for any person or entity, unless otherwise exempted, carrying on Corporate Service Provider (CSP) business as defined by the Act, in or from within Bermuda.
5. A CSP business, as defined in 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, 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
 - vi) Acting as, 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
 - 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, Exempted Partnerships Act 1992 and the Overseas Partnerships Act 1995
 - 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 they arrange for the registration or formation, or in the case of a company, the sale, transfer or disposal of a company or they provide 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 CSP which only manages companies within a group of which it is a member, is not required to be licensed.
10. The above is a summary of the relevant provisions of the Act. Prospective applicants should refer to the applicable provisions for complete particulars of the terms of the Act.

III. APPLICATIONS

11. 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 CSP or its officers to operate within the terms of the licence.
12. 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; by Overseas Partnerships permitted by the Minister of Finance to conduct business in Bermuda; and by other unincorporated entities or individuals conducting corporate service provider business, as defined, in or from within Bermuda.
13. **A limited licence** authorises the licensee to provide any or all of the corporate services under the definition of corporate service provider business, subject to the limits set out in section 10(6) of the Act.
14. **An unlimited licence** authorises the licensee to provide any or all of the corporate services under the definition of CSP business.
15. 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 activities which are to be undertaken and the resources that the CSP has at its disposal.
16. All applications for a CSP 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” section of the Authority’s website: www.bma.bm). A copy of the application form is available in electronic form on the Authority’s website. The Authority is available to applicants, together with their professional advisors, to discuss the application process and the minimum licensing criteria.

17. 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 CSPs to observe proper corporate governance policies and processes with the necessary integrity and skill; and for full cooperation where there is consolidated supervision. 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.
18. 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).
19. In considering an application for a CSP 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
 - f) Take into account any other information which it considers relevant in relation to the application
20. The Authority will not grant a licence unless satisfied that the minimum licensing criteria are met or are capable of being met by the applicant. However, even when so satisfied, the Authority always retains discretion to not 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 interests of clients or potential clients.
21. 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 with applications as promptly as possible. The time required to complete its initial enquiries may vary depending on the nature of the issues which may arise and the difficulty 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; and in most cases the timetable will be appreciably less.

IV. SUPERVISORY PROCESS

22. The Authority uses a risk-based framework to conduct its supervisory programme, which enables the Authority to:
- Carry out the responsibilities placed on the Authority by various Acts in an effective and efficient manner
 - Allocate resources to the most pertinent risk areas
 - Observe and adhere to international best practices while monitoring and responding to external developments, taking into consideration the nature of the Bermuda market
23. Supervision enables and requires judgments to be made about the nature of a CSP's business, the quality of its management, the effectiveness of its controls and compliance frameworks, the fairness of its treatment of customers and the sufficiency of its financial viability. In order for the Authority to make these judgments, it needs to keep under review information from a range of sources.
24. The Authority's supervision of CSP businesses involves regular discussions with the senior management of licensed firms, together with scrutiny of financial information on the undertaking's performance, receipt and review of statutory certifications and regular compliance visits to the undertaking's premises. Additionally, the Authority uses thematic reviews to assess the control, oversight and monitoring activities of regulated entities regarding emerging and high-risk matters.
25. While the Act provides certain supervisory powers for the Authority to require information from undertakings, the Authority expects undertakings to voluntarily and routinely provide the information necessary for its supervision.
26. When concerns arise about the completeness or timeliness of such information, the Authority may decide to utilise its formal powers to require information.
27. 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 regulation 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 fuller review of the risks involved in the business or where particular concern or difficulties may have arisen in the Authority's normal on-site work.

Reporting Requirements

28. The Act requires that, on an annual basis, each licensed CSP submit a Certificate of Compliance to the Authority confirming it has complied with the minimum criteria for licensing requirements and all Codes of Practice issued by the Authority under section 7 of the Act. A company that fails to provide the Certificate of Compliance as required by section 46 or give particulars by section 46(2) is guilty of an offence. The form that such Certificate should take can be found on the Authority's website.
29. In addition to the above reporting requirements, the Authority would expect undertakings to be open and proactive, and advise the Authority of any significant developments when, or before, they

occur. Matters that would be considered significant developments 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
- d) Details of any cybersecurity incidents
- e) Details of any material claims on any insurance policies in force
- f) Material changes in the business undertaken, including any proposal to undertake non-CSP related business

30. Where the Authority suspects deficiencies in 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.

31. Where the Authority in the course of its supervision identifies breaches of the Act, the Authority will consider legal or regulatory actions. The Authority would normally seek remedial action by the licensed undertaking 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, the Authority would not hesitate to do so.

Prudential Visits

32. As part of its routine supervisory activities, the Authority conducts regular prudential meetings with an undertaking's senior management; this is in addition to the thorough off-site and on-site assessments and analysis that it undertakes in relation to regulated entities. These meetings ensure that the Authority maintains detailed monitoring of industry developments via building relationships with key management, as well as identifying any specific corporate issues.

33. Topics for discussion may include: corporate strategic initiatives and other significant company developments; internal control issues; matters of concern to management or the Authority; and follow up areas of concern previously identified.

34. Prudential discussions can take place at the Authority's offices or at the undertaking's own premises.

On-site Programmes

35. The purpose of on-site supervision is to enable the Authority to review compliance with policies and procedures (e.g., record keeping, segregation of assets, etc.), as well as the processes that management have put in place to monitor and control key risks in the business. On-site supervision involves structured visits to an undertaking's offices when, typically, the Authority interviews a range of management and staff, and reviews a selection of individual entity files. The frequency of on-site visits will 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 for the interests of clients or about the financial position of the CSP), the Authority may conduct a visit at short (or even without) notice. There will not usually be a need for a separate prudential discussion in a year when a CSP is scheduled for an on-site visit unless significant recommendations emanate from the on-site visit. The Authority's Anti-Money Laundering and Anti-Terrorist Financing Department, pursuant to their AML remit, may accompany the Prudential team during an on-site.

36. The Authority will normally write to a licensed undertaking approximately eight to 10 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 is specific to the scope of each on-site visit, but would generally include the business plan, management reports, and policies and procedures relating to the undertaking's corporate governance, compliance and risk management practices.
37. 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.

Reputation of Bermuda (Gatekeeper Role)

38. The Authority recognises that a CSP 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, CSPs 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 CSP's business and ultimately to the jurisdiction. These risks are heightened where the financial wellbeing of the Gatekeeper's business is heavily reliant upon the client. The Gatekeeper's ability to act independently and objectively is paramount to ensuring it will carry on its CSP 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.