

**A BILL**

**entitled**

**CORPORATE SERVICE PROVIDER BUSINESS AMENDMENT ACT 2024**

TABLE OF CONTENTS

- 1 Citation
- 2 Amends section 2
- 3 Amends section 9
- 4 Amends section 11
- 5 Amends section 13
- 6 Amends section 16
- 7 Amends section 21
- 8 Amends section 27
- 9 Amends section 46
- 10 Inserts Part 7A
- 11 Amends section 55
- 12 Amends section 55B
- 13 Inserts section 55C
- 14 Amends Schedule 1
- 15 Consequential amendments
- 16 Commencement

WHEREAS it is expedient to amend the Corporate Service Provider Business Act 2012 to make further provision for regulating corporate service provider business by clarifying the application of the Act in certain respects, by enhancing the provisions for financial prudence, by providing for fees; and for purposes connected with and incidental to those matters.

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

**Citation**

1 This Act, which amends the Corporate Service Provider Business Act 2012 (the "**principal Act**"), may be cited as the Corporate Service Provider Business Amendment Act 2024.

**Amends section 2**

2 The principal Act is amended in section 2—

- (a) in subsection (1), by inserting in the appropriate alphabetical order the following—  
“late fee” means such fee prescribed pursuant to section 13(3);
- (b) in subsection (2), by deleting the words “for profit” and substituting the words “by way of business”.

**Amends section 9**

3 The principal Act is amended by repealing section 9(1)(a).

**Amends section 11**

4 The principal Act is amended in section 11(6) by deleting the words “such conditions” and substituting the words “such limitations or conditions”.

**Amends section 13**

5 The principal Act is amended in section 13—

- (a) by deleting the heading and substituting the following “Fees”;
- (b) by deleting the word “and” at the end of paragraph (a);
- (c) by deleting the full stop at the end of paragraph (b), substituting a semicolon and inserting thereafter the following—  
“(c) on an application for approval to exempt or modify any prudential or technical standard requirements applicable to a licensed undertaking in accordance with the provisions of section 55A;
- (d) on an application for extension of a time period for filing, under section 55C.”;
- (d) by inserting after subsection (1) the following—  
“(1A) Different fees may be prescribed having regard to the scope and nature of the business conducted by the licensed undertaking.”.
- (e) by repealing subsection (2) and inserting thereafter the following—  
“(3) Where a licensed undertaking—
  - (a) fails to pay the prescribed fee as provided in subsection(1);
  - (b) fails to file a certificate of compliance as required by section 46(1);
  - (c) fails to file financial statements as required by section 54A(5);
  - (d) fails to file, or cause to be filed, consolidated financial statements as provided by section 54C;

- (e) fails to file annual or quarterly returns as required by section 54E or 54F;
- (f) fails to file statutory returns as required by or pursuant to section 55;
- (g) fails to pay a prescribed fee or other fee within any extended period of time under section 55C,

the undertaking, in addition to any application or other fee prescribed in respect of the undertaking under or pursuant to this Act, shall be liable to a late fee in accordance with the Fourth Schedule to the Bermuda Monetary Authority Act 1969.”.

**Amends section 16**

6 The principal Act is amended in section 16(1), by deleting the words “in respect of which a licence is revoked”.

**Amends section 21**

7 The principal Act is amended in section 21 by inserting after subsection (3) the following—

“ (4) The Authority shall publish in the Gazette in such form as it thinks fit, notice of every surrender of a licence under this Act”.

**Amends section 27**

8 The principal Act is amended in section 27(1) by deleting the words “section 13, 45, 46 or 55” and substituting the words “section 45 or 55”.

**Amends section 46**

9 The principal Act is amended in section 46(2) by deleting “shall be liable to a civil penalty not exceeding \$5,000 for each week or part of a week that the undertaking is in default” and substituting “shall be liable to pay a late fee”.

**Inserts Part 7A**

10 The principal Act is amended by inserting after section 54 the following—

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**PART 7A****ACCOUNTS AND AUDIT****Duty to prepare annual statements or accounts**

54A (1) Every licensed undertaking shall prepare annual financial statements or accounts as required by this section in respect of all transactions or balances relating to its business.

(2) A licensed undertaking which holds client money shall prepare audited annual financial statements of its business, and shall cause copies of those statements to be laid before the undertaking in general meeting.

(3) A licensed undertaking which does not hold client money shall prepare annual accounts in such form and containing such particulars as the Authority may direct.

(4) A licensed undertaking where required by subsection (1) to prepare financial statements or to prepare audited financial statements or accounts in accordance with subsection (6), shall keep a copy of the most recent financial statements or accounts or audited financial statements or accounts as the case may be at each of its offices together with the auditor's report thereon.

(5) Not later than four months after the close of its financial year every licensed undertaking shall provide the Authority with a copy of its financial statements or its accounts for that year, and where such statements or accounts have been audited in accordance with subsection (6), a report thereon.

(6) Notwithstanding subsection (1), the Authority may require a licensed undertaking to prepare audited financial statements or accounts in such manner as it may direct.

**Appointment of auditors**

54B (1) Every licensed undertaking required by the Authority in accordance with section 54A(2) or (6) to prepare audited financial statements or accounts shall annually appoint an approved auditor to audit the financial statements or accounts.

(2) If a licensed undertaking fails to appoint an approved auditor as required by subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Authority may appoint an approved auditor and shall fix the remuneration to be paid by that undertaking to such auditor.

(3) A licensed undertaking shall forthwith give written notice to the Authority if it—

- a) proposes to remove an auditor before the expiration of his term of office; or
- b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.

(4) A licensed undertaking which fails to comply with this section commits an offence and shall be liable on summary conviction to a fine of \$25,000.

(5) For the purposes of this section “approved auditor” means a person entitled to practice as a public accountant and is a member of a professional body for the time being declared by the Authority for purposes of this Act.

(6) No person having an interest in any licensed undertaking otherwise than as a client, and no officer, servant or agent of any undertaking shall be eligible for appointment as an approved auditor for that undertaking; and any person appointed as such auditor to any licensed undertaking who subsequently acquires such interest or

becomes an officer, servant or agent of that licensed undertaking shall cease to be an approved auditor.

### **Consolidated financial statements**

54C (1) For the purposes of and notwithstanding section 54A and section 54B, the Authority may permit a licensed undertaking which is part of a group (as that term is defined in this section) to submit or cause to be submitted consolidated financial statements for the purposes of this Part if the Authority is satisfied that—

- (a) its parent entity or other entity responsible for preparing consolidated financial statements for the group is a financial institution (as defined in this section); and
  - (b) where applicable—
    - (i) the consolidated financial statements have been audited by an approved auditor; and
    - (ii) copies of the consolidated financial statements have been laid before the entity in general meeting.
- (2) In subsection (1)—

“approved auditor” means the auditor who is approved under and for the purposes of a relevant Act;

“consolidated financial statements” means the financial statements of a group which) are presented on a consolidated basis;

“financial institution” means an entity that is licensed by the Authority under a relevant Act;

“group” means a group of entities related through ownership or control such that it prepares consolidated financial statements for financial reporting purposes;

“relevant Act” means the Banks and Deposit Companies Act 1999, the Investment Business Act 2003 or the Trusts (Regulation of Trust Business) Act 2001.

(3) Notwithstanding this section, a licensed undertaking that is permitted to submit or cause to be submitted consolidated financial statements must comply with any applicable provisions of this Part.

(4) The Authority may request additional information and documents from a licensed undertaking to which this section applies where it considers appropriate in respect of any transactions or balances relating to its business, and the licensed undertaking shall comply with such request.

### **Auditor to communicate certain matters to Authority**

54D (1) An auditor of a licensed undertaking shall in the circumstances specified in subsection (2) forthwith give written notice to the Authority of those matters.

(2) The circumstances referred to in subsection (1) are—

- (a) his resignation before the expiration of his term of office;

- (b) his intention not to seek to be re-appointed;
- (c) a decision to include a modification of his report on the licensed undertaking's financial statements and, in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(3) An auditor of a licensed undertaking shall forthwith give written notice to the Authority of any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the licensed undertaking of which he is an auditor, of the Authority's functions under this Act.

(4) An auditor who fails to comply with subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding \$25,000.

#### **Duty to prepare annual returns**

54E (1) Every licensed undertaking shall prepare annual returns in such form and containing such information as the Authority may determine.

(2) Every licensed undertaking shall keep a copy of an annual return prepared in accordance with subsection (1), at its registered office, or principal office, or office of its senior representative, for the period of five years commencing from the date of preparation.

(3) Annual returns must be signed—

- (a) where the undertaking is a company, by any combination of two directors, senior executives or the chief executive of the licensed undertaking;
- (b) where the undertaking is a partnership, by the managing partner and a senior executive of the licensed undertaking;
- (c) where the undertaking is not a company or partnership, by two senior executives in respect of the licensed undertaking.

#### **Duty to prepare quarterly returns**

54F (1) Quarterly returns in such form and containing such information as determined by the Authority, shall be prepared by every licensed undertaking in such form as the Authority may direct. Quarterly returns prepared in accordance with subsection (1)—

- (a) shall be submitted to the Authority within 21 days of the end of each quarter of the calendar year submission date; and
- (b) must, where the undertaking—
  - (i) is a company, be signed by any combination of two directors, senior executives or chief executive of the undertaking;
  - (ii) is a partnership, be signed by the managing partner and a senior executive of the undertaking;
  - (iii) is not a company or partnership, by two senior executives in respect of the undertaking.

(2) Every undertaking to which this section applies shall maintain a copy of a quarterly return submitted to the Authority in accordance with subsection (2)(a), at its registered office or principal office for the period of five years commencing from the submission date.”.

#### **Amends section 55**

11 The principal Act is amended in section 55—

(a) by repealing and replacing subsection (1) as follows—

“(1) The Authority may make Rules prescribing statutory returns, prudential and technical standards which shall be complied with by licensed undertakings as applicable in relation to—

- (a) financial statements;
- (b) capital requirements;
- (c) liquidity;
- (d) statutory returns;
- (e) client money;
- (f) cybersecurity.”;

(b) by inserting after subsection (1) the following—

“(1A) The Authority may in such Rules prescribe standards that impose different requirements to be complied with by licensed undertakings in different situations or in respect of different activities.

(1B) Audited financial statements and accounts shall be in a prescribed form and different forms of return may be prescribed for licensed undertakings holding different classes of licence.”;

(c) in subsection (3) by deleting the words “shall be liable to a civil penalty not exceeding \$5,000 for each week or part of a week that the undertaking is in default” and substituting the words “shall be liable to a late fee”.

#### **Amends section 55B**

12 The principal Act is amended in section 55B by deleting the words “client funds” wherever they appear and substituting the words “client money”

#### **Inserts section 55C**

13 The principal Act is amended by inserting after section 55B the following—

##### **“Authority may extend certain time periods**

55C (1) The Authority may on application from a licensed undertaking in such form as the Authority may direct and made not less than five business days before the end of the specified time period, extend the specified time period within which certain information or documents must be filed by a licensed undertaking.

(2) The Authority may grant or refuse to grant an extension under this section and may impose such conditions on the extension as the Authority considers appropriate.

(3) The Authority shall not grant an extension unless it is satisfied that it is appropriate to do so having regard to the reasons provided by the undertaking requesting the extension.

(5) In subsection (1), “specified time period” means the time period specified in section 46(1), 54A(5), 54F(2)(a) or pursuant to section 55.”.

#### **Amends Schedule 1**

14 The principal Act is amended in Schedule 1 by inserting after paragraph 3(3) the following—

“ (3A) A licensed undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain minimum net assets of—

- (a) \$50,000 where the licensee has an unlimited licence;
- (b) \$12,000 where the licensee has a limited licence,

or such amount as the Authority may direct taking into consideration the nature, size and complexity of the licensed undertaking”.

(3B) An undertaking shall not be regarded as conducting its business in a prudent manner unless it maintains or will maintain as the case may be, adequate liquidity; having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the time at which those liabilities will or may fall due and its assets mature, and to any other factors appearing to the Authority to be relevant or appropriate given the nature, scale, complexity and risk profile of the undertaking.”.

**Consequential amendments**

15 The Schedule, which amends the Fourth Schedule to the Bermuda Monetary Authority Act 1969, has effect.

**Commencement**

16 This Act shall come into operation on such day as the Minister of Finance may appoint by notice published in the Gazette.



**SCHEDULE**

**(section 15)**

The Fourth Schedule to the Bermuda Monetary Authority Act 1969 is amended under the heading “Corporate Service Provider Business Act 2012” by adding the following paragraphs—

<b>CORPORATE SERVICE PROVIDER BUSINESS 2012</b>		
3	Late fee	\$1,000.00
4	Certificate of compliance late fee pursuant to sections 13(3) and 46(2)	\$1,000.00
5	Applying to be granted an exemption from, or modification of, prudential standards under section 55A(2)	\$635.00
6	Applying to be granted an extension of the filing deadline under section 55C	\$300.00

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**CORPORATE SERVICE PROVIDER BUSINESS AMENDMENT BILL 2024**

**EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Corporate Service Provider Business Act 2012 (the “Act”) to make further provision for regulating corporate service provider business by expanding the scope of the prudential rules applicable to corporate service providers, enhancing the provisions for financial prudence, creating new fees; and for purposes connected with and incidental to those matters.

Clause 1 provides for the title of the Bill.

Clause 2 amends section 2 of the Act to insert a definition of “late fee”; and to amend the definition of “corporate service provider business” to clarify that persons who provide corporate services by way of business require a licence under the Act.

Clause 3 repeals section 9(1)(a) of the Act. Exemptions are provided by an exemption order made by the Minister of Finance under that section.

Clause 4 amends section 11 of the Act to provide for the imposition of limitations or conditions on the grant of an application for a licence.

Clause 5 amends section 13 of the Act to further provide for fees to be prescribed under the Bermuda Monetary Authority Act 1969. Where a licensed undertaking fails to tender such fee in time, it shall be liable to a late fee.

Clause 6 amends section 16 of the Act with respect to winding up a licensed undertaking.

Clause 7 amends section 21 of the Act to require the Bermuda Monetary Authority (the “Authority”) to publish a notice in the Gazette where a licence has been surrendered.

Clauses 8 and 9 amend section 27 and section 46 respectively of the Act in consequence of the introduction of late fees.

Clause 10 inserts a new Part 7A, sections 54A to 54F, in the Act to require the preparation of financial statements and accounts by corporate service business providers as follows:

- Section 54A confers a duty on licensed undertakings to prepare annual financial statements or accounts. A licensed undertaking which holds client money is required to submit audited financial statements. Licensees must keep a copy of the most recent accounts at its offices together with the auditor’s report. These must be filed with the Authority no later than four months after the end of the financial year.
- Section 54B requires every licensed undertaking that holds client money to appoint an auditor approved by the Authority to audit its financial statements or accounts. Failure to do so is an offence.
- Section 54C permits a licensed undertaking to submit consolidated financial statements in certain circumstances. The Authority is empowered to require additional information or documents with respect to the financials of such licensed undertaking.
- Section 54D imposes an obligation on appointed auditors to communicate certain matters to the Authority, including the auditor’s resignation, his intention to not seek re-appointment or a decision to include a modification in his report. An auditor who fails to comply with any requirement imposed on him under this section is liable on summary conviction to a fine of \$ 25,000.

- Section 54E required licensed undertakings to prepare annual returns.
- Section 54F requires licensed undertakings to submit quarterly returns.

Clause 11 amends section 55 of the Act to make further provision for prudential rules that will be applicable to, and must be filed, by licensed undertakings.

Clause 12 amends section 55B of the Act with respect to client money which a licensed undertaking must hold separately from any assets of its business.

Clause 13 inserts section 55C in the Act to refer to provide for applications to the Authority for extension of certain filing time periods under the Act.

Clause 14 amends Schedule 1 to the Act to provide for minimum capital and liquidity requirements for corporate service provider businesses. The requirements will be based on the nature, scale, complexity, risk profile and type of business or tier of licence obtained by the licensed undertaking.

Clause 15 and the Schedule provide for consequential amendments to the Fourth Schedule to the Bermuda Monetary Authority Act 1969 to prescribe the late fees to be introduced pursuant to clause 5 of this Bill.

Clause 16 provides for the Minister of Finance to bring the Act into operation by notice published in the Gazette.