



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

Proposed Enhancements to the Corporate Service Provider Business
Act 2012

June 2024

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I. BACKGROUND

1. Bermuda operates in a highly complex, interlinked, worldwide financial market. In this context, it is essential that our various financial services-related legislative and regulatory frameworks remain aligned with relevant international standards and best practices and that they remain fit for purpose.
2. The Group of International Finance Centre Supervisors (GIFCS) completed a peer review of the Bermuda Trust and Corporate Services Provider (TCSP) regimes in 2021. The review entailed technical and effectiveness assessments against the Standard on the Regulation of Trust and Corporate Service Providers (Standards) published by GIFCS. Following this review, the Bermuda Monetary Authority (Authority or BMA) received recommendations to ensure that the Bermuda regulatory and supervisory regimes for trust businesses and Corporate Service Providers (CSPs) remained aligned with the TCSP Standards. The BMA, being a contributor to the Standards, has committed to complying with it. Some of the enhancements proposed within this consultation paper will give effect to this commitment through enhancements to the CSP supervisory framework.
3. This Consultation Paper (CP) presents a comprehensive set of proposed recommendations for enhancing the Corporate Service Provider Business Act 2012 (Act). These recommendations encompass various aspects, including but not limited to enhanced prudential requirements, improvements to supervisory powers and housekeeping amendments. The proposed enhancements aim to bolster regulatory oversight and promote transparency within the CSP sector, ensuring Bermuda's CSP regime remains aligned with international standards while retaining its competitiveness.
4. All stakeholders are invited to provide feedback on the proposed enhancements to the CSP regime as outlined in this CP to ensure that all material views are considered. Such feedback should be submitted on or before **9 August 2024** via email to policy@bma.bm.

II. RECOMMENDATIONS FOR CONSIDERATION

5. Research was conducted on the frameworks in comparable GIFCS member jurisdictions to ensure Bermuda's CSP regime remains internationally competitive and aligned with the Standards. Furthermore, consideration was given to the appropriate transposition of related supervisory requirements from other financial sectors currently supervised by the Authority. Finally, discussions were held with supervisory teams across the Authority to ensure that the CSP framework continues to mature and allow the Authority to achieve its regulatory objectives for this sector. As a result, the following amendments are being proposed:

A. Refinement of Scope

6. To provide greater clarity on the scope of the Act, it is proposed that section 2(2) of the Act be amended to remove the words 'For profit' and replace them with "*By way of business.*"
7. Section 9 (1)(a) of the Act, which provides that section 8 of the Act shall not, under specific circumstances, apply to Bermuda Bar members, will be removed. This amendment is proposed to remove potential uncertainty and achieve consistency on the basis that any person, not just a member of the Bermuda Bar Association, who provides services by virtue of their employment by a licensed CSP or one of its affiliates is not subject to separate licensing. To provide further clarity on this front, the Authority will issue separate guidance pertaining to qualifying criteria for falling within the scope of the CSP regime.

B. Prudential Requirements

8. The Minimum Criteria for Licensing will be amended to introduce the requirements for CSP licensees to maintain appropriate liquidity and net assets. They will also need to report this to the Authority, and this will form part of the Authority's consideration of whether

the licensee is conducting business in a prudent manner, as is standard in other BMA regimes. Supporting details of the new reporting requirements will be outlined in rules, regulations, and/or other secondary instruments, as appropriate.

9. A minimum net asset requirement will also be introduced to the regulatory framework with a proposed amount of \$50,000 for unlimited licence holders and \$12,000 for limited licence holders. The introduction of a minimum net asset requirement serves as a prudent measure to provide a buffer against unforeseen financial challenges, thereby enhancing the overall safety and soundness of our financial system and protecting CSP clients.
10. The submission of accurate and timely financial filings to the Authority is of paramount importance in ensuring transparency and accountability. The proposed filings will serve as a comprehensive record of a CSP's financial health and its performance and compliance with regulatory standards. Such filings will also allow the Authority to intercede early to protect clients, should the situation warrant such action.
11. Consequently, it is proposed that CSPs that hold client money be required to submit annual audited accounts to the BMA. Alternatively, CSPs that do not hold client money will only be required to file annual management accounts.
12. To allow for the proposed changes, the Act will be amended to introduce the additional filing requirements. The proposed filings include:
 - i. **Annual Audited Financial Statements** – applicable only for CSPs holding client money;
 - ii. **Annual management account statements** – for CSPs who do not hold client money;
 - iii. **Quarterly liquidity returns** – applicable to all CSP licence holders; and
 - iv. **Statutory Returns** – as prescribed by the Authority.

C. Consolidated Financial Filings

13. The Authority will not require financial filings from licensed CSPs that are owned by a parent company, which provides consolidated financial statements to the Authority. This exclusion is based on the consolidated financial reporting of the licensed parent company, which already covers the financial information of its subsidiaries. Therefore, the subsidiary does not need to file the same information again.
14. Licensed CSPs that also hold a banking, investment business, and/or trust business licence issued by the Authority and that are already filing audited financial statements in accordance with their respective licenses will only have to submit one copy of their audited financial statements to the Authority.

D. Fees

15. As part of the comprehensive enhancements to the CSP framework, the Authority examined the fee structure of the regime. In light of this review, it was determined that the introduction of an administrative fee for overdue submissions would be more appropriate to the nature of the issue than imposing a civil penalty.
16. Thus, should a licensed CSP neglect to submit a mandatory filing within the required period as stipulated in the Act, it shall be subject to a late fee of \$1,000. The imposition of this late fee serves as a deterrent and encourages timely compliance, thereby ensuring the effectiveness of regulatory procedures while maintaining the integrity of the regulatory framework.
17. Late fees will be applicable to overdue submissions of Certificates of Compliance, financial filings, and other prudential returns as outlined within the Act. Filing deadlines for these submissions will be explicitly outlined in the respective sections of the Act and the accompanying instruments. The introduction of late fees, to be applied when specific

deadline-driven requirements have not been met, will enable the Authority to take swift, targeted action that is commensurate with the nature and scale of the breach in question.

E. Application for Filing Extensions, Exemptions and/or Modifications

18. If a licensed CSP determines that it cannot meet the filing deadline for any prudential filings, it may request an extension. The proposed application fee for this extension is \$300. This fee is intended to cover administrative costs associated with processing extension requests and ensures that such requests are made judiciously.
19. Currently, a licensed CSP may apply to the Authority for exemption or modification of a prudential standard or requirement applicable to it under the Act. Applications for exemption or modification will incur a fee of \$635 and the licensed CSP must provide a detailed justification of the request for the Authority's consideration.
20. Declined applications will not be eligible for a refund of the application fee. The proposed fees align with the fees imposed in other regulated sectors, ensuring consistency across regulatory processes, and covering the costs associated with reviewing and adjudicating exemption requests.

F. Winding Up and Licence Revocation

21. It is proposed that the Act be amended to broaden the circumstances in which the Authority may present a petition to the court for the winding up of a company or the dissolution of a firm. The proposal removes the reference to a company in respect of which a licence is revoked in recognition that undertakings carrying on CSP business without a licence or those that have otherwise surrendered their licence would not be in scope. This proposal is made to strengthen the protections afforded to clients and potential clients of such CSPs.

G. Duty to prepare annual accounts and appointment of auditors

22. In considering the implementation of mandatory financial filings, the Authority acknowledges the need for corresponding amendments to the existing legislative framework. To address this, a pivotal addition to the Act will outline the obligations pertaining to the preparation of annual accounts, setting forth the parameters within which entities must fulfil their duty to maintain accurate and transparent financial records and file them with the Authority. Furthermore, the new section will outline the requirements for the appointment of auditors applicable to CSPs holding client money (as discussed in paragraph 11).
23. For CSPs holding client money, the Authority also proposes strengthening its ability to determine the robustness of client money arrangements by introducing a requirement to review controls around holding those monies.

H. Reporting Requirements for Auditors

24. In tandem with the proposed introduction of audited accounts as a requisite for CSPs holding client money, a new provision pertaining to the auditors will be required. This new provision will mandate auditors to report specific matters directly to the Authority, serving as a critical element in upholding transparency, accountability, and regulatory oversight. It is important to underscore the significance of this obligation and how it reinforces the regulatory framework's commitment to ensuring robust financial governance.

I. Surrender of Licence: Amend Section 21 (Surrender Process)

25. To provide clarity to interested persons as to whether a CSP continues to maintain a licence, it is proposed to amend section 21 to introduce the requirement for all licence surrenders to be gazetted.

J. Administrative and Consequential Amendments

26. The proposed amendments to the Act are driven by the primary objective of enhancing the regulatory framework, thus aligning Bermuda with global standards, and fortifying the jurisdiction's commitment to robust financial governance. In addition to these overarching goals, the amendments' secondary purpose is to address crucial supervisory and administrative adjustments.
27. The proposed introduction of late fees for overdue filing submissions will result in amendments to section 46 of the Act. This involves the removal of the existing civil penalties to be replaced with the respective late fees, as detailed in Appendix I. The outlined changes represent a balanced and practical response to encourage timely submissions without imposing undue burdens through civil penalties.
28. To provide clarity and consistency for stakeholders, it is further proposed that the undefined term 'client funds' used within the Act be replaced with the term 'client money'. It is intended that a definition of 'client money' will subsequently be included in Client Money Rules, to be made pursuant to the rule-making power set out in the proposed revised section 55 (1) of the Act.
29. In the interest of transparency, and notwithstanding that the Client Money Rules will be consulted on separately in due course, it is proposed that client money be defined as follows:
- “Client money is money in any currency that, in the course of carrying on corporate service provider business, a corporate service provider receives or holds (whether in Bermuda or elsewhere) in respect of an agreement entered into, or to be entered into with or for a client.”*
30. In recognition of the wide range of undertakings that are eligible to participate in the CSP industry and in alignment with the approach taken by the Authority in certain other

regulatory frameworks, it is proposed that section 11(6) be revised such that the granting of licences may be subject to limitations, and additional conditions, where appropriate.

31. The Fourth Schedule to the Bermuda Monetary Authority Act 1969 will be amended under the heading “Corporate Service Provider Business Act 2012” by inserting the proposed fees outlined in Appendix I.

III. CONCLUSION

32. The requirements outlined in the Act and respective secondary instruments are crucial in ensuring that safeguards and measures are implemented to protect client interests. As proposed, introducing additional powers would significantly bolster the Authority’s capacity to monitor the condition of licensed CSPs and address breaches of the requirements promptly and proportionately. Moreover, the expanded powers granted to the Authority are appropriately dissuasive, establishing a fair and necessary deterrent against non-compliance. Consequently, these enhancements are poised to effectively encourage compliant behaviour among licensed CSPs operating in the Bermuda market.

33. Consideration should be given as to whether the proposed amendments may cause operational challenges or potentially contradict existing obligations. Stakeholders are invited to comment on the following:

- *How do you anticipate the new financial filing obligations impacting your organisation’s ability to comply with licensing requirements?*
- *Are there any specific challenges your organisation foresees in meeting the net asset requirement as outlined in the redefined licensing requirements?*
- *When issuing further guidance in relation to paragraph 7, are there any key considerations the Authority should be aware of?*

- *Does the definition of ‘client money’ proposed in paragraph 28 accurately capture what is being held by some CSPs on behalf of clients or potential clients?*
- *The Authority proposes to allow sufficient time for licenced CSPs to comply with the new requirements; what considerations should the Authority be aware of when determining this transition period?*

34. All stakeholders are invited to comment on the proposals set out in the CP. Questions regarding the rationale, scope or application of the proposed enhancements should be submitted on or before **9 August 2024**. All submissions will be reviewed and carefully considered before a decision is made to proceed with a proposal.

35. Please forward all comments to policy@bma.bm.

**Appendix I
New Proposed Fees**

Fee Description	Fee Amount
Late Fees	
Financial Filing late fee	\$1,000
Certificate of Compliance late fee	\$1,000
Processing Fees	
Exemption application	\$635
Extension application	\$300

