



BENEFITS FLOW FROM THE REGULATION OF CORPORATE SERVICE PROVIDERS

The Corporate Service Provider Business Act 2012 (**CSP Act**) came into effect on 1 January 2013, with a transition period of 12 months, and for the first time creates a regime for the prudential oversight of corporate service providers (**CSPs**) in Bermuda.

The CSP Act creates a licensing and supervisory regime for CSPs and applies to all entities who offer formation, administrative and secretarial services to companies and partnerships in Bermuda. Any CSPs carrying out business in Bermuda have also been brought under the anti-money laundering and anti-terrorist financing (**AML/AFT**) regulations. The regulatory framework created by the CSP Act will not only assist in addressing AML/ATF matters but will help ensure that the all CSPs are regulated according to the same standards thus helping to maintain Bermuda's reputation as a premier offshore financial centre.

1. LICENSING/REGULATION

It is an offence under the CSP Act for a person to carry on corporate service provider business in or from within Bermuda without a licence and hefty criminal penalties apply. The CSP Act permits persons carrying on corporate service provider business to continue to do so without a licence during the transitional period provided that they obtain a licence within 2 years of the commencement of the CSP Act (i.e. by 1 January 2015).

In order to obtain a licence, a CSP must show that it will meet specified criteria and once licensed a CSP who fails to fulfill or maintain the criteria may have its licence revoked. A licensed CSP will be expected, under the supervision of the Bermuda Monetary Authority (**BMA**), to address the management of risk in respect of its clients within a controlled framework. It will be required to have systems, policies and procedures in place, consistent and proportional to its operations, to ensure that appropriate vetting functions are carried out in a responsible manner including consideration of the impact on the jurisdiction. A CSP will also be expected to demonstrate that its controllers and officers are 'fit and proper persons' and have sufficient expertise to carry on corporate service provider business, which includes amongst other things formation of Bermuda entities, provision of a company secretary and/or registered office, maintenance of books and records, drafting and filing forms, resolutions, returns and notices. The BMA is currently preparing a statement of principles and guidance notes to assist CSPs in identifying appropriate levels of due diligence which should apply with a view to aligning these with other highly regulated jurisdictions.

In addition to the requirement for CSPs to comply with the CSP Act they will also be required to comply with the provisions of the Corporate Service Provider (Beneficial Owner) Regulations 2012, the Proceeds of Crime Act 1997 (POCA) and the Regulations made thereunder.

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2. ENHANCED EFFICIENCY OF PROCESSES

The passing of the CSP Act paves the way for significant improvements in the efficiency of Bermuda in relation to the process of forming companies and partnerships and transferring shares.

2.1 Elimination of Double Vetting

Currently there is a "double vetting" arrangement in place whereby both the BMA and a CSP vet potential owners of shares and interests in Bermuda companies and partnerships. Under the new regulatory regime there will be a streamlining of the incorporation and share transfer process in relation to licensed CSPs whereby the "double vetting" arrangement will be discontinued and the BMA's direct involvement in the formation of non-regulated companies and partnerships will cease.

This change will be implemented by an amendment to the Exchange Control Regulations 1973 whereby a company registered under the Companies Act 1981 shall be exempted from the requirement for permission in relation to the issue, transfer or substitution of securities provided that its registered office is at the registered office of a licensed CSP and it is required to keep its register of members at that address. The licensed CSP will be responsible for the vetting process.

2.2 Beneficial owner disclosure requirements

The BMA announced, in February 2013, that the current disclosure requirements for shareholders of Bermuda companies and partnerships were to be relaxed with immediate effect to bring them in line with recent revisions to international standards for the identification of beneficial owners. The disclosure threshold has changed and entities will now be required to provide personal declaration forms for persons who own or control 10% or more of voting rights in a company or partnership, rather than the previous 5% level. The new 10% threshold will also apply for companies that are subject to exchange control provisions seeking approvals from the BMA to transfer shares/securities.

These less onerous disclosure requirements, which are also in line with AML/ATF legislation, will benefit clients by reducing the amount of time spent on providing due diligence documents for minority holdings.

3. CONCLUSION

The introduction of the CSP Act and the consequential changes that it brings are welcomed. They mark the extension of best regulation practices to Bermuda's CSPs and introduce streamlined processes both for the formation of companies and partnerships and for share transfers. It is believed that this streamlining will create greater efficiencies and improve speed to market for international clients.

April 2015



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