



BERMUDA

MONEY SERVICE BUSINESS AMENDMENT REGULATIONS 2014

BR 85 / 2014

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The Minister of Finance, in exercise of the power conferred by section 20AA(2) of the Bermuda Monetary Authority Act 1969, makes the following Regulations:

Citation

1 These Regulations, which amend the Money Service Business Regulations 2007 (the “principal Regulations”), may be cited as the Money Service Business Amendment Regulations 2014.

Amends regulation 6

2 Regulation 6 of the principal regulations is amended by inserting after paragraph (3) the following paragraphs—

“(4) In addition to the condition imposed under paragraph (3), the Authority may impose such other conditions as it considers appropriate at the time of licensing of the applicant.

(5) The Authority may at any time, where it has made a determination or on the application of a licensed company add to, vary or delete any conditions imposed under paragraphs (3) and (4).

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(6) When adding to, varying or deleting any conditions imposed under paragraphs (3) and (4), the Authority shall give notification to the licensed company and shall consider any representation the company may make in arriving at its final decision on the matter.”.

Inserts regulations 9A through 9E

3 The principal Regulations are amended by inserting the following regulations after Regulation 9—

“Notification of new or increased control

9A (1) No person shall acquire more than ten per cent, or become a majority shareholder controller, of a licensed company unless—

- (a) he has served on the Authority a written notice stating that he intends to become such a controller of the licensed company; and
- (b) either the Authority has, before the end of the period of ninety days beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the licensed company, or that period has elapsed without the Authority having served him as provided under regulation 9B a written notice of objection to his becoming such a controller of the licensed company.

(2) Paragraph (1) applies also in relation to a person becoming a member of a licensed company which is a firm.

(3) A notice under paragraph (1)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve a notice of objection under regulation 9B.

(4) Where additional information or documents are required from any person by a notice under paragraph (3) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in paragraph (1)(b).

Objection to new or increased control

9B (1) The Authority may serve a notice of objection under this regulation on a person who has given notice under regulation 9A, unless it is satisfied—

- (a) that the person concerned is a fit and proper person to become a controller of the description in question of the licensed company;
- (b) that the interests of clients or potential clients of the licensed company would not be in any other manner threatened by that person becoming a controller of that description of the licensed company; and

(c) without prejudice to paragraphs (a) and (b), that, having regard to that person's likely influence on the licensed company as a controller of the description in question, the minimum criteria would continue to be fulfilled in the case of the licensed company or, if any of those criteria is not fulfilled, that that person is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this regulation the Authority shall serve the person concerned with a preliminary written notice stating that the Authority is considering service on that person of a notice of objection and that notice—

(a) shall specify as provided in paragraph (3); and

(b) shall give particulars of the rights conferred by paragraph (4).

(3) A notice of objection under this regulation shall specify which of the matters mentioned in paragraph (1) the Authority is not satisfied with and, subject to paragraph (5), the reasons for which it is not satisfied.

(4) A person served with a notice under paragraph (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(5) Paragraphs (2) and (3) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

(6) Where a person required to give a notice under regulation 9A in relation to becoming a controller of any description becomes a controller of that description without having given the notice, the Authority may serve him with a notice of objection under this regulation at any time within three months after becoming aware of his having done so and may, for the purpose of deciding whether to serve him with such a notice, require him by notice in writing to provide such information or documents as the Authority may reasonably require.

(7) The period mentioned in paragraph 9A(1)(b)(with any extension under regulation 9A(4)) and the period mentioned in paragraph (6) shall not expire, if they would otherwise do so, until fourteen days after the end of the period within which representations can be made under paragraph (4).

Objection to existing controller

9C (1) Where it appears to the Authority that a person who is a controller of any description of a licensed company is not or is no longer a fit and proper person to be such a controller of the licensed company it may serve him with a written notice of objection to his being such a controller of the licensed company.

(2) Before serving a notice of objection under this regulation the Authority shall serve the person concerned with a preliminary written notice stating that the

Authority is considering service on that person of a notice of objection and that notice shall—

- (a) subject to paragraph (5), specify as provided in paragraph (3); and
- (b) give particulars of the rights conferred by paragraph (4).

(3) A notice of objection under this regulation shall, subject to paragraph (5), specify the reasons for which it appears to the Authority that the person in question is not or is no longer a fit and proper person as mentioned in paragraph (1).

(4) A person served with a notice under paragraph (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(5) Paragraphs (2) and (4) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contraventions by controller

9D (1) Subject to paragraph (2), any person who contravenes regulation 9A by—

- (a) failing to give the notice required by regulation 9A(1)(a); or
- (b) becoming a controller of any description to which that regulation applies before the end of the period mentioned in regulation 9A(1)
 - (b) in a case where the Authority has not served him with a preliminary notice under regulation 9B(2),

shall be guilty of an offence.

(2) A person shall not be guilty of an offence under paragraph (1) if he shows that he did not know of the acts or circumstances by virtue of which he became a controller of the relevant description; but where any person becomes a controller of any such description without such knowledge and subsequently becomes aware of the fact that he has become such a controller he shall be guilty of an offence unless he gives the Authority written notice of the fact that he has become such a controller within fourteen days of becoming aware of the fact.

(3) Any person who—

- (a) before the end of the period mentioned in regulation 9A(1)(b), becomes a controller of any description to which that regulation applies after being served with a preliminary notice under regulation 9B(2);

- (b) contravenes regulation 9B by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description; or
- (c) having become a controller of any description in contravention of that regulation (whether before or after being served with such notice of objection) continues to be such a controller after such a notice has been served on him,

shall be guilty of an offence.

(4) A person guilty of an offence under paragraph (1) or (2) shall be liable on summary conviction to a fine not exceeding \$25,000.

(5) A person guilty of an offence under paragraph (3) shall be liable—

- (a) on summary conviction to a fine not exceeding \$25,000 and in respect of an offence under subparagraph (c) of that paragraph, to a fine not exceeding \$500 for each day on which the offence has continued;
- (b) on conviction on indictment to a fine not exceeding \$50,000 or to imprisonment for a period not exceeding two years or to both.

Restriction on and sale of shares

9E (1) This regulation applies—

- (a) to all the shares in the licensed company of which the person in question is a controller of the relevant description which are held by him or any associate of his and were not so held immediately before he became such a controller of the licensed company; and
- (b) where the person in question became a controller of the relevant description as a result of the acquisition by him or any associate of his of shares in another company, to all the shares in that company which are held by him or any associate of his and were not so held before he became such a controller of that licensed company.

(2) The powers conferred by this regulation shall be exercisable in relation to the shares to which this regulation applies where a person—

- (a) has contravened regulation 9B by becoming a controller of any description after being served with a notice of objection to his becoming a controller of that description;
- (b) having become a controller of any description in contravention of that regulation continues to be one after such a notice has been served on him; or

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(c) continues to be a controller of any description after being served under regulation 9C with notice of objection to his being a controller of that description.

(3) The Authority may by notice in writing served on the person concerned direct that any specified shares to which this regulation applies shall, until further notice, be subject to one or more of the following restrictions—

- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer of or an agreement to transfer the right to be issued with them, shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder; or
- (d) except in liquidation, no payment shall be made of any sums due from the licensed company on the shares, whether in respect of capital or otherwise.

(4) The court may, on the application of the Authority, order the sale of any specified shares to which this regulation applies and, if they are for the time being subject to any restrictions under paragraph (3), that they shall cease to be subject to those restrictions.

(5) No order shall be made under paragraph (3) in a case where the notice of objection was served under regulation 9B or 9C—

- (a) until the end of the period within which an appeal can be brought against the notice of objection;
- (b) if such an appeal is brought, until it has been determined or withdrawn.

(6) Where an order has been made under paragraph (3) the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.

(7) Where shares are sold in pursuance of an order under this regulation the proceeds of sale, less the costs of the sale, shall be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for the whole or part of the proceeds to be paid to him.

(8) A copy of the notice served on the person concerned under paragraph (3) shall be served on the licensed company or company to whose shares it relates and, if it relates to shares held by an associate of that person, on that associate.”.

Inserts regulation 10A

4 The principal Regulations are amended by inserting after Regulation 10 the following—

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“Duty to prepare accounts

10A (1) Every licensed company shall prepare an annual financial statement of accounts and shall cause copies to be laid before the company in a general meeting.

(2) Not later than four months after the close of its financial year, a licensed company shall provide the Authority with a copy of its accounts.”.

Amends Schedule

5 The Schedule to the Regulations is amended—

(a) by inserting after paragraph (1) the following—

“CORPORATE GOVERNANCE

1A (1) The licensed company shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.

(2) Without prejudice to subparagraph (1) the business of the licensed company shall be effectively directed—

(a) by at least two persons; and

(b) be under the oversight of such number of non-executive directors appointed as the Authority considers appropriate given the nature, size, complexity and risk profile of the licensed company.”;

(b) in paragraph 2(3) by inserting after the words “net assets of \$50,000” the words “or such amount as the Authority may direct taking into consideration the nature, size and complexity of the licensed company”.

(c) by inserting after paragraph 2 the following—

“CONSOLIDATED SUPERVISION

3 The position of the licensed company within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

INTEGRITY AND SKILL

4 The business of the licensed company will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.”.

Commencement

6 These Regulations shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for the coming into operation of different provisions.

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Made this 27th day of October 2014

Minister of Finance