Bermuda Bankers Association

Cumberland House, 7th Floor

1 Victoria Street, Hamilton HM11

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Bermuda Monetary Authority (BMA)

43 Victoria Street

Hamilton HM12

Bermuda

RE: Consultation Paper – Amendments to the Third Schedule of the Banks and Deposit Companies Act 1999 (BDCA)

Via E-Mail to **policy@bma.bm**

The Bermuda Bankers Association (BBA or we) is taking this opportunity to share its views on the proposed amendments to the BDCA to allow for the issuance of a restricted banking license focused on areas such as FinTech, Digital Assets, the Casino industry, international clientele and residents who are not able to access the current banking system.

The BBA recognizes the Government’s desire to expand the banking landscape to foster economic development but expects that all banks operating from Bermuda will be subject to the same regulatory framework, recognizing that the BMA applies a risk based approach which should be able to address the unique risks associated with this restricted class of banks.

If the BMA is contemplating applying lower regulatory standards to newly licensed banks operating in higher risk sectors, the BBA would expect that this would only be part of a transitional risk management approach leading to a comprehensive pathway for these newly licensed banks to achieve full regulatory and capital adequacy parity with the full-service banks. **We would be opposed to any long-term application of standards that would provide one class of banks with an advantage over another class.**

BBA members have noted that the proposed amendments would permit digital banks to provide basic banking services, however, there is no further elaboration on what that encompasses. A search of other jurisdictions indicates that basic banking accounts (e.g. in Canada, HK and Singapore) are often described as affordable bank accounts with limits on transactions. The services set out in section 14(5)(a)(i) to (iii) of the BDCA which the BMA defines as basic banking include:

(i) BD$ current account, savings;

(ii) the payment and collection of cheques, drafts and orders;

(iii) deposits or other similar accounts in BD$.

There is no limitation on these basic banking account services under the BDCA save for the requirement that they are BD$ denominated, however our members are concerned that unless there is going to be some parallel restriction applied under the exchange control regulations, there would be no statutory limitation on the ability of a restricted bank licensee to provide foreign currency accounts under the penumbra of “basic banking services”.

With respect to addressing the needs of unbanked residents, our members would ask that the BMA undertake an assessment of why local customers are unable to be banked and how

this Restricted Bank solution is going to solve the identified problem, after considering affordability, minimum balance requirements, deposit insurance costs and the AML/ATF customer risk assessment process.

If AML/ATF issues are deemed to be the principal barrier to banking access, the jurisdiction should consider an amendment to the Proceeds of Crime Act (and associated Regulations and Guidance Notes) that will create the flexibility to provide basic banking services to these higher risk customers (while still protecting the jurisdiction from bad actors and complying with the highest global standards).

Should the framework be adjusted, the new path could then be available to all licensed banks and increase the potential for all banks to be able to service higher risk customers.

If there is not going to be an amendment to the Proceeds of Crime framework, the BBA would ask that the BMA consider, and address in its guidance, how Restricted Banks will overcome the hurdles that existing banks have to overcome by way of exiting clients outside of risk appetite. This issue can also impact how existing banks would have to consider that risk in relation to our clearing and settlement interactions with a Restricted Bank via the payments system.

Our members also noted the proposal to amend the Third Schedule of the Banks and Deposit Companies Act to enable the Restricted Banks to service overseas clients. As there is no present restriction on the local banks’ ability to service overseas clients, and local banks are not subject to the Third Schedule, it is not clear whether the BMA intends that the Restricted Banks may provide unrestricted banking services to overseas clients. Accordingly, we would ask that services to overseas clients be restricted to services specifically permitted under the Third Schedule.

We raise this point because current BBA member banks are not restricted by local law from providing services to non-Bermuda entities – therefore, we may already service clients that are not resident or incorporated in Bermuda. If Restricted Banks are permitted to provide service to any overseas client (and not subject to the Third Schedule restriction) this would put them potentially in direct competition with existing local banks. Full regulatory and capital adequacy parity for Restricted Banks should be required for services that are potentially in direct competition with local banks.

Our members understand that the thrust of this initiative is to provide a banking channel for locally licensed Digital Asset Business (DAB) providers (and potentially their affiliates and agents), Casinos, and individuals and entities who cannot access banking services in Bermuda. It would be helpful to clarify whether it is anticipated that these overseas clients would also include overseas Casinos or overseas affiliates of locally licensed DABs, and if so, would a full public disclosure of all Beneficial Owners be provided.

Finally on the issue of parity, the BBA seeks codified assurance from the BMA that the level of minimum capital and liquidity applied to Restricted Banks (with allowance for appropriate phase-in) will be based on the Basel III Final Rule for Bermuda as applied to all presently licensed banks, to include the Pillar II add-ons (per the Capital Adequacy Risk Profile or CARP) and the Pillar III disclosure requirements.

The BBA also raises some other factors for the BMA to consider in its guidance when dealing with the vetting and approval process for Restricted Banks, and these are as follows:

* location of Correspondent Banks and the functional currency that they deal in;
* robust application of the Fit & Proper standards for principals, beneficial owners and key executives;
* examining the ultimate source(s) of contributed and standby capital to ensure that there are no hidden contingencies; and
* Bermuda reputation impact assessment on the organizations seeking a restricted license.

We welcome the opportunity to discuss our views at your convenience and please direct any questions to the undersigned.

Kind regards,

Thomas J. O’Rourke

Thomas O’Rourke

Chief Executive Officer

Bermuda Bankers Association