

NAMLC

National Anti-Money Laundering Committee

In collaboration with

Ministry of Finance

Ministry of Justice

Bermuda Monetary Authority

Consultation Documents:
**Draft Legislation relating to Anti-Money
Laundering and Counter Terrorism Financing
and related documentation**

May 1, 2008

UPDATING BERMUDA'S AML/CFT REGIME

The Government of Bermuda is committed to ensuring that Bermuda has a strong, robust and effective regime for the combating of money laundering and terrorist financing. This commitment was highlighted in the Speech from the Throne delivered on Friday, 2nd November 2007, and reinforced in the Throne Speech given on 1st February 2008, when Parliament was reopened following the general election on 18th December 2007. In addition, the Government of Bermuda has reiterated to the international community its full commitment to completing in a timely fashion, its ongoing program of work, designed to bring Bermuda's already strict controls into alignment with the revised FATF 40 Recommendations and FATF 9 Special Recommendations.

1. Introduction

The attached document entitled *"Bermuda Update on Anti-Money Laundering and Counter Financing of Terrorism, May 2007 – April, 2008"* details many of the significant steps which have been taken in the last twelve months to update Bermuda's regime in this regard. This document is provided to assist in expanding industry's knowledge and understanding of Bermuda's progress. This consultation package is yet another key step in progressing this important initiative.

The National Anti-Money Laundering Committee ("NAMLC") is therefore pleased to submit for your review and comments, the attached draft legislation and other related documents, which are integral parts of Bermuda's action plan to update our legislative and regulatory regime relating to Anti-Money Laundering and Counter Terrorism Financing ("AML/CFT"). These documents include:

- A draft *Proceeds of Crime Amendment Act ("POCA") 2008*;
- A draft *Proceeds of Crime Regulations*, which pertain to obligations relating to systems and controls to prevent money laundering and terrorism financing;
- A draft of the *General Guidance Notes* to assist financial institutions in the implementation of the regulations and other relevant AML/CFT obligations; and
- A draft of the Order required under Schedule 1 Part 1 of the Anti-Terrorism (Financial and Other Measures) Act 2004 ("ATFA") to designate the financial institutions required to submit Suspicious Activity Reports ("SARS") related to suspicions of financing of terrorism.

It is intended that this round of consultation will consist of two phases. This first phase will address our proposals as to how Bermuda may incorporate the FATF recommendations into our legislative framework. The second phase will focus on a legislative framework for monitoring and enforcing the AML/CFT regime in Bermuda. The documents related to the second phase will be distributed later this month.

The deadline for comments on the attached draft documents is 10th June 2008, to allow for proper consultation of the issues raised, and finalization of the legislation for tabling in Parliament during the summer legislative session.

2. Background

In early 2007, NAMLC consulted with industry on three draft bills, including a Proceeds of Crime Amendment Bill 2007, which addressed some of the deficiencies that had been identified in Bermuda's legislative and regulatory framework. Subsequently, the three bills were enacted by Parliament, and the steps required to effectively bring these bills into operation are currently being progressed as quickly as practicable. Also included in that package was a draft of the Proceeds of Crime Regulations, which incorporated requirements, related to systems, controls and procedures to meet international KYC standards. Industry reviewed these regulations and provided comments which are summarized in the document attached along with our responses. (*"Responses to Consultation on Draft POCA Regulations"*).

Since the IMF mission took place, NAMLC has undertaken further review of the effectiveness of Bermuda's AML/CFT framework. Amongst other things, this has involved assessment of a number of additional helpful points raised by the assessors during their visit, and included as recommendations in the Mutual Evaluation Report. As a result of this process, a further round of consultation with industry stake-holders was initiated by NAMLC; and a consultative paper was prepared in October 2007, and distributed to key stakeholders. The responses to this round of consultation are also attached (*"Responses to Consultation Paper issued in October 2007"*).

At the time of carrying out the consultation in October 2007, NAMLC had planned that legislative proposals would be submitted to Parliament in late 2007, and that full consultation would be undertaken on the updated regulations and guidance notes as a package in the first quarter of 2008. After further consideration, NAMLC concluded that this timetable had to be modified in order to conduct further research on key aspects of the proposed enhancements to Bermuda's AML/CFT regime. As a result, changes were made to the action plan and timetable. We would note that we have undertaken comparative analysis of our proposed legislation to protect Bermuda's competitive position, while also ensuring that our legislation appropriately incorporates international standards and provides the proper safeguards for our reputation as a quality international financial centre.

3. Amendments/Updates to the Proposals in the October consultation

3.1 Designation of Self-regulatory Organisations ("SROs")

Section 4 Part 3 of the October consultation paper proposed that POCA would be amended to enable the Minister to designate SROs to oversee the compliance and enforcement of AML/CFT standards for independent professionals. NAMLC has

adopted this proposal and appropriate draft legislation will contain the provisions to allow for such designation. Initial discussions have been held with the appropriate bodies. However, it has been determined that in the first instance, an appropriate supervisory regime, for the Bermuda Monetary Authority (“BMA”) to monitor and enforce compliance with the Regulations by the financial institutions, will be developed and agreed before further discussions are held to progress matters with the relevant organizations.

3.2 Regulation of Company Service Providers (“CSPs”)

The October consultation paper sought views on the regulation of CSPs. Following extensive discussion on this matter, it has been agreed that the majority of the CSP’s are either owned by or closely affiliated with professional firms or entities already regulated by the BMA, and therefore, will be subject to the regulations either directly or indirectly. Consequently, NAMLC has decided to delay bringing CSPs, as a distinct group, into scope until a later stage. NAMLC is of the view that our present regime for the incorporation of companies and oversight of the relevant service providers, along with the changes proposed for the legislation in 2008, provide for an effective level of oversight of customers; and any changes must be assessed carefully to ensure that we will develop a more effective level of compliance with FATF requirements. It is anticipated that this matter will be addressed in 2009.

4. Current Proposals

The attached package of documents for this consultation includes draft primary and secondary legislation and a first draft of the Guidance Notes for financial institutions. These drafts address most of the issues raised by the IMF assessment team, which NAMLC has recommended Bermuda adopt at the present time, and which have not already been completed. These drafts also address points arising out of the previous consultations with industry. Details of the relevant issues addressed in each document are detailed below.

4.1 Proceeds of Crime Amendment Bill 2008

The key amendments proposed in this bill are as follows:

- The definition of financial institutions is updated to include certain entities that are currently exempted from licensing requirements and to further clarify which insurers are now brought into scope;
- Explicit protection of certain disclosures primarily relating to SARS is now provided;
- Provision is now made for the forfeiture of instrumentalities of a money laundering offence, and for the criminalizing of the possession of the proceeds of crime;

- Changes are made to composition of NAMLC; and
- The wording relating to the business activities of independent professionals has been further amended in line with FATF requirements.

4.2 Proceeds of Crime (Anti- Money Laundering and Anti-Terrorist Financing) Regulations:

The draft of the Regulations incorporate issues that have been raised by industry, the IMF report, and NAMLC's further review of the FATF requirements. In particular, the following changes have been made:

- Definitions of beneficial owner and control, particularly relating to trusts, have been refined;
- The scope relating to Politically Exposed Persons ("PEP") has been narrowed by removing the requirement for local PEP. This is consistent with the FATF Recommendations;
- The scope of the Regulations has been extended to apply to systems and procedures relating to combating the financing of terrorism as well as money laundering.

4.3 BMA Guidance on implementation of Proceeds of Crime Regulations:

A draft of the general guidance for financial institutions is attached. It is intended that sectoral guidance will also be prepared in conjunction with the relevant sectors of the financial services industry. In addition, drafts of proposed forms will also be provided in due course.

4.4 Anti-Terrorism (Financial and Other Measures) Order:

This Order is required under Schedule 1, Part 1, paragraph 1(12) of ATFA, to delineate the financial institutions which are in the regulated sector and required to file reports under that Act. The entities to be brought under this requirement will be identical to those financial institutions which are in scope under the Proceeds of Crime Act and related Regulations.

5. Next Steps

A bill detailing the responsibilities and powers of the supervisory authorities is being prepared and will be circulated to stakeholders shortly. This bill will designate the BMA as the supervisory authority for financial institutions to monitor and enforce compliance with the Regulations, while also giving the Minister of Justice the power to designate

SRO's for independent professionals. It is anticipated that this bill will be presented to Parliament in the upcoming session.

In addition, further amendments to ATFA to address outstanding matters are currently under review by NAMLC. Finally, an amendment to the FIA Act to increase the size of the Board and to provide statutory immunity to the Board will also be tabled.

Drafts of these bills will be circulated for consultation later this month, along with details of the proposed approach to supervision and enforcement of AML/CFT requirements by the BMA.

6. Timelines

It is expected that all of the preparatory work relating to the 2007 legislation will be completed so that those Acts can be commenced during third quarter. In addition, the FIA amendments and the ATFA Order should also be commenced in the third quarter. In order to give time for entities to address relevant matters, it is expected that the POCA 2008 Amendment Act and the Regulations will be commenced during the fourth quarter of 2008.

7. Feedback

Feedback received through this consultation process will be taken into account in the finalization of the legislation. To assist us in this matter we would request that respondents prioritise comments and indicate relative importance – preferably through the use of a high, medium and low ranking. As noted earlier, the deadline for submission of comments is 10th June 2008. Prior to that date, it is intended that we will have a roundtable with representatives of all affected constituencies to directly address any issues.

Your continued cooperation and support of Bermuda's commitment to maintaining its reputation as a quality international centre and a key participant in the fight against money laundering and financing of terrorism is greatly appreciated. Thank you for the time and effort to provide us with feedback on the documents provided. Please send your comments by mail or email to the addresses given below on or before **10th June 2008**. **Please note that electronic copies of these documents are available on the Bermuda Government website www.gov.bm**

Responses should be sent to:

National Anti Money Laundering Committee Office
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4th Floor
43 Church Street HM 12
Email: clister@gov.bm

With copy to Mr. Anthony Manders
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Consultation Documents

- Draft POCA Amendment Act 2008
- Draft POCA Regulations 2008
- Draft ATFA Order 2008
- Draft Guidance Notes for Financial Institutions

Information Documents

- Bermuda Update on Anti-Money Laundering and Counter Financing of Terrorism, May 2007 – April 2008
- Responses to POCA Draft Regulations issued May 2007
- Responses to Consultation Paper issued in October 2007