

**BERMUDA UPDATE ON ANTI-MONEY LAUNDERING AND
COUNTER FINANCING OF TERRORISM**
May 2007 – April, 2008

Recognizing the importance of protecting the global financial system from abuse by money launderers and those promoting or assisting terrorism, the Government of Bermuda reiterated to the international community its full commitment to completing, in a timely fashion, a plan of action to bring Bermuda's already strict controls into alignment with the revised FATF 40 Recommendations and 9 Special Recommendations.

1. Legislative initiatives- IMF Assessment

The IMF Report recognised that Bermuda's program of reform and update of its provisions was already at a very advanced stage of development by the time IMF review team arrived in Bermuda in May 2007. New primary legislation was at that time before Parliament, and new secondary legislation – Regulations under the Proceeds of Crime Act – was in the process of being developed, following market consultation. Since the IMF mission, the Bermuda authorities have continued to press ahead with an agreed plan of action to address many of the specific recommendations made by the assessors.

Immediately following the mission, three important pieces of legislation that were already before Parliament were enacted in June and August of 2007. These are the Proceeds of Crime (Amendment) Act 2007, the Criminal Justice (International Cooperation) (Bermuda) Amendment Act 2007, and the Financial Intelligence Agency Act 2007. Commencement and effective implementation of this legislation will address a number of the specific recommendations made by the assessors.

Proceeds of Crime Amendment Act 2007

The amendments to the Proceeds of Crime Act dealt with a range of matters. In particular, provision has been made for the following:

- Enlarging the scope of production orders and search warrants;
- The making of customer information orders;
- The voiding of certain contracts;
- The freezing of funds;
- New provisions on confidentiality;
- Making provision for bringing within the scope of money laundering regulations, both the legal and accounting professions;
- Formalizing the role of the BMA in monitoring compliance with the reporting and other obligations of financial institutions under the Proceeds of Crime Act 1997 (“POCA”) and Regulations and the Anti-Terrorism (Financial and Other Measures) Act 2004 (“ATFA”).

These various amendments were, as noted, already at a very advanced stage at the time of the IMF mission; and the Bermuda authorities took steps to enact the amending legislation. At the same time, the authorities recognized, and the IMF assessment team observed that additional enhancements and refinements to certain of these provisions remained necessary. Accordingly, the authorities took the decision to enact the 2007 amendment bills but to delay commencement. They also immediately commenced discussions about a further series of amendments to the legislative framework, which would in turn, deal with many of the additional matters raised by the assessors. These include, for example, additional provisions pertaining to the framework of controls over Designated Non-Financial Businesses and Professions (including lawyers and accountants) (“DFNBPs”); and enhanced enforcement powers for the Bermuda Monetary Authority in relation to financial institutions. (These points are discussed further below.).

Financial Intelligence Agency Act 2007.

The second important law that was enacted in June 2007 is the Financial Intelligence Agency Act 2007.

This Act establishes a new independent body, the Financial Intelligence Agency (“FIA”), which will become the financial intelligence unit (“FIU”) for Bermuda. The Act establishes the FIA as an administrative FIU which will replace the current law enforcement unit. The FIA will be overseen by a board of directors appointed by the Minister of Justice, who will be answerable to Parliament for its operations. The Board will appoint a Director who will be its CEO, and such other staff as are required for the conduct of its operations. The functions of the FIA are to receive Suspicious Activity Reports (“SARs”) relating to suspected proceeds of crime and potential financing of terrorism; and to analyse and refer SARS to the police in Bermuda as well as to overseas authorities where an investigation may appear to be warranted.

Criminal Justice (International Cooperation) (Bermuda) Amendment Act 2007

The third Act, the Criminal Justice (International Cooperation) (Bermuda) Amendment Act 2007, was enacted in August 2007. This Act widens the scope of international cooperation in criminal proceedings by making provision for the search and seizure of evidence required in connection with foreign criminal proceedings. This amendment will ensure that Bermuda effectively provides the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions and related proceedings.

2. Authorities Actions - Post IMF Assessment

As noted above, at the time of the IMF’s visit, the Bermuda authorities were at a very advanced stage in developing and implementing legislative and other operational changes to the Anti-Money Laundering and Counter Financing of Terrorism (“AML/CFT”) regime; and have continued to press ahead with an agreed plan of action. Overall, the authorities consider that the legislative initiatives that were nearing completion at the time of the visit, substantially addressed many of the recommendations that were included in the IMF Report.

The above-mentioned Acts, while passed by Parliament into law, have not yet commenced. This is due to the fact that the implementation of these Acts rely upon all the arrangements being in place for a smooth and effective transition from the present FIU within the Bermuda Police Service to the new administrative FIA.

The authorities are carrying forward detailed plans for the FIA to be operational as early as possible in 2008. To that end, the members of the Board of the FIA have now been selected and are meeting on a weekly basis to implement the detailed action plan that they have prepared to complete the transitioning process in a seamless manner. Actions taken to date include the preparation and submission of updated draft budgets as well as the identification of suitable premises. Arrangements to secure these premises are now being finalized. In addition, considerable work has been done on the recruitment of personnel, including the recent advertisement of the two key positions required by the Act for the Agency to be operational. Discussions have also been held with the Bermuda Police Service to solicit their assistance in this important transition. There has been ongoing dialogue with peer organizations in other jurisdictions and the Egmont Group Secretariat, the global headquarters for financial intelligence units. These entities have all provided invaluable advice and assistance for effective establishment of the agency. In addition, site visits have been made to agencies in other jurisdictions.

Once the relevant preparations have been completed, and in particular, the key staff are in place, the new Acts will be brought into force.

Further POCA and ATFA Amendments

Since the IMF mission took place, the authorities have undertaken further review of the effectiveness of components of Bermuda's AML/CFT framework. This has involved assessment of recent developments in other jurisdictions, as well as consideration 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 the National Anti-Money Laundering Committee (“NAMLC”), and a consultative paper was prepared and distributed to key stakeholders in October 2007. Based on this further consultation and review, NAMLC has recommended additional changes be made to POCA and is also in the process of reviewing ATFA, Bermuda’s domestic legislation for combating terrorism, and relevant UN resolutions or conventions. As part of this review, NAMLC is addressing the merits of having any or all of these conventions extended to Bermuda and is currently reviewing a draft bill that updates the terrorism legislation to address identified deficiencies. Some of the new legislative proposals discussed in this consultative paper and which have now been incorporated into draft legislation are as follows:

- Broadening the scope of draft AML regulations to include due diligence requirements and record keeping with respect to both money laundering and financing of terrorism activities.
- Introducing Civil sanctions for violation of AML/CFT requirements.
- Enhancing the powers of the Bermuda Monetary Authority (“BMA”) – For the avoidance of doubt, the BMA is explicitly being given responsibility for both compliance and enforcement of the POCA Regulations for financial institutions. The objects of the BMA, as stated in the Bermuda Monetary Authority Act 1969, are being amended to include responsibility for compliance and enforcement of the regulations.
- Bringing within the scope of the AML Regulations, financial institutions otherwise exempted from licensing requirements. This means that compliance with the customer due diligence requirements in relation to money laundering and terrorist financing will be applied to all relevant financial institutions

operating in and from Bermuda.

- Designating Self-Regulatory Organizations (“SROs) - Independent professionals will now be required to be in compliance with the Regulations. Legislation has been developed to enable the Minister to designate SROs to oversee the compliance and enforcement of AML/CFT standards for independent professionals. Professional bodies such as the Institute of Chartered Accountants of Bermuda and the Bermuda Bar Association may then be designated and take on oversight and enforcement responsibility as SRO’s. In order to be designated, a supervisory body must demonstrate that they have the ability and willingness to fulfill the responsibilities effectively.

Also included in the consultation paper were the following matters which are now expected, as deemed appropriate, to be the subject of legislative initiatives in 2009.

- Designated Non-Financial Businesses and Professions (“DFNBPs”) - The authorities are reviewing how best to address the regulation of other sectors which are expected to be in scope including corporate service providers, real estate agents and retailers of high value goods.
- Charities - Updating the laws and regulations related to Charities to minimize the risk of potential abuse.

An important initiative was completed in March 2008 when a bill to amend the Revenue Act 1898 was enacted by Parliament with specific provisions to expand cross-border currency declaration arrangements. These new legislative provisions, which address specific recommendations made by the IMF review team, incorporate the following

matters:

- Allow for the Collector of Customs to require a customs declaration from all persons importing or exporting large sums of currency or negotiable instruments (greater than \$10,000);
- Include a power to prescribe customs declarations respecting different categories of currency and negotiable instruments;
- Provide that goods, currency and negotiable instruments are liable to forfeiture if they are not declared or are falsely declared on a customs declaration;
- Provide for penalties for declarations made or subscribed before an officer and allow civil penalties to be imposed;
- Provide that directors, officers or any persons purporting to act in those capacities, who consent to or connive with their company in the commission of a customs offence, will also be guilty of the relevant offence and will be subject to the relevant sanctions; and
- Increase criminal penalties for false declarations.

The appropriate steps are being taken so that these legislative provisions can be commenced as soon as practicable.

The authorities are proposing that most of the additional legislative changes relating to POCA proposed in the October 2007 consultative paper, as well as changes to the terrorism legislation and the relevant regulations, be brought forward to Parliament in mid-2008. This will allow the new provisions to be aligned with the legislative changes that were adopted in June and August 2007, and ensure all the proposed changes are brought into force in a coordinated manner. The comprehensive package of draft legislation and relevant documentation completed in April 2008, is now being distributed for consultation.

It should be noted that draft Proceeds of Crime Regulations were circulated to industry for consultation in April and May of last year. Following the IMF visit, a decision was taken by the authorities to delay the finalization of these Regulations in order to carry out a more comprehensive review of the proposed Regulations along with other changes to primary legislation being proposed. These Regulations, along with draft guidance notes for financial institutions, are part of the current consultation package.

Operational matters

The legislative framework is only one element of a country's AML/CFT regime. Execution and implementation is another critical area. To that end, the authorities have been conducting separate assessments of the resource needs, both with regard to staffing and training across the public sector, with a view to ensuring that Bermuda's AML/CFT action plan can be sustained and the objectives can be achieved in a timely manner. NAMLC has identified that a key challenge has been the lack of sufficient staff with appropriate expertise rather than any lack of allocated budgetary resources. However, department budgets for 2008 are also being carefully reviewed. The authorities are ensuring that full priority is given to filling outstanding positions and developing the required expertise in all areas. For example, within the BMA, extensive work is already well under way with a view to preparing for the new wider and enhanced compliance and enforcement role. Among other developments, a new Senior Officer with extensive AML/CFT and police experience has been appointed to oversee the onsite compliance monitoring process, as well as related investigations arising in the financial sector.

In addition, the Minister of Justice has retained a consultant to assist in the transition of the FIU to FIA; to support the coordination of Bermuda's AML/CFT plan including its extensive legislative program; and to provide advice to the Minister on relevant AML/CFT matters. This appointment was the first phase in the plan to fulfill Government's commitment to establish a National Coordinator for AML/CFT matters; a specific recommendation in the Report, which the authorities recognized could add

considerable value to our national regime. This senior person will head the Office of NAMLC and will be responsible for coordinating Bermuda's AML/CFT activities. Such coordination will primarily be effected through ensuring that an appropriate national action plan is developed, implemented and updated periodically as necessary to reflect changes in AML/CFT standards and/or developments in the Bermuda marketplace. The Office will work with all relevant government departments, industry and appropriate international bodies on initiatives relating to the detection and prevention of money laundering and the financing of terrorism ("ML/FT") in Bermuda, as well as Bermuda's participation in the international effort against ML/FT.

Operationally, the Bermuda Police Service has implemented a realignment of personnel which has permitted the current FIU to be more closely integrated with the Serious & Organized Crime Division, thereby enhancing investigatory efforts. Continuous review of resources and of training needs remain key priorities.

The Bermuda Police Service has also reviewed its current databases for compiling statistics on restrained property, and recovery rates for confiscations, and has implemented a number of changes in the format of presentation and reports to enhance data collection.

In March 2008, the Department of Public Prosecutions ("DPP") held an international DPP's conference in Bermuda. This conference was attended by representatives of all constituent agencies of NAMLC, the judiciary and members of the Bermuda Bar Association. One session of that conference incorporated a training seminar on the challenges in identifying and prosecuting AML/CFT offences, and actions which can be taken to address such challenges. The material presented was helpful in expanding the knowledge and understanding in this critical area.

DNFBPs have been advised of forthcoming changes to POCA and POCA Regulations; and the authorities have been in ongoing dialogue with relevant parties to discuss the impact on their services and to encourage them to plan for the major changes that will be

involved. This has been the case particularly with the Bar Council and Institute of Chartered Accountants of Bermuda, given the possible role for these professional bodies in monitoring and enforcing standards among their members. Discussions in this regard will continue in the second half of 2008.

3. Conclusion

All of these initiatives are included in the national action plan which addresses outstanding and ongoing issues in this critical area. The additional private and public sector reforms, when fully implemented, will ensure that Bermuda's financial sector continues to meet its obligations while maintaining Bermuda's competitive position in the provision of premier financial services to the global community.

Cabinet approval to address the outstanding issues in this area has been obtained. Furthermore, the commitment of the Government of Bermuda 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. The Speech reiterated that *“Bermuda's regime for combating money-laundering and terrorist financing, otherwise know as our anti-money laundering/combating the financing of terrorism regime, is to be strengthened in order to raise the bar in our challenge to eliminate organized criminal activity in Bermuda and in the international arena”*. Details of many of the proposed legislative changes were provided as well as the commitment to appoint a National Coordinator. The Government further reaffirmed its determination to safeguard the security and economic well-being of Bermuda from the threat of organized crime and terrorism that now manifests itself on a global basis.

Bermuda has had a long history of knowing its customers (“KYC”). Our regulation, legal framework, and business practices (which have also for many years had a strong KYC focus) have therefore, provided significant impediments to illicit and unethical business practices. Bermuda has made significant progress to enhance our regime and will fulfill all its objectives in the national action plan as evidenced by the progress over the last

twelve months since the IMF review.