

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 20, 2008

UPDATING BERMUDA'S AML/CFT REGIME

The commitment of the Government of Bermuda, to ensuring that Bermuda has a strong, robust and effective regime for the combating of money laundering and terrorist financing, was highlighted in the documents provided in the first phase of this consultation program distributed on May 1, 2008.

As promised at that time, the National Anti-Money Laundering Committee ("NAMLC") is now pleased to provide you with additional documentation which represents the second phase of our consultation process to update our AML/CFT regime. The first phase provided most of the required legislative amendments to bring us into a high level of compliance with the FATF requirements. The documents provided in this phase will substantially complete the legislative requirements related to the FATF Recommendations and Special Recommendations and will also address issues related to monitoring and enforcement of compliance with the Regulations by financial institutions in particular.

The documents included in this package are as follows:

- Draft Anti-Money Laundering and Anti-Terrorist Financing (Supervision and Enforcement) Act 2008 which makes provisions to establish appropriate supervisory authorities for the financial institutions and professionals to monitor and ensure compliance with the proposed Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Finance) Regulations 2008 ("Regulations").
- Draft Anti-Terrorism (Financial and other Measures) Amendment Act 2008 which primarily expands the definition of terrorism and addresses other identified deficiencies relating to disclosures.

Draft Anti-Money Laundering and Anti-Terrorist Financing (supervision and Enforcement) Act 2008

The Act designates the Bermuda Monetary Authority ("BMA") as the supervisory authority for financial institutions and allows for designation of other supervisory authorities. Further, it details certain general duties which will be required for all supervisory authorities and then provides the powers for the BMA to effectively supervise financial institutions for compliance with the Regulations.

Duties of Supervisory Authorities

Supervisory authorities will be responsible for taking appropriate measures to monitor and ensure compliance with the Regulations. They will also be required to issue guidance notes that are approved by the Minister and publicly available. In addition, they will have reporting requirements related to the carrying out of their duties.

It is anticipated that this legislation will be amended to incorporate the powers of other supervisory authorities as arrangements are finalized for their designation.

Supervision by the Authority

The key elements of the BMA supervisory framework will be as follows:

Registration

It is intended that all entities to be supervised for AML/CFT compliance will be required to register with the BMA, including those who are currently licensed, classified or authorized. The registration process will provide the BMA with key - albeit limited - information required on each entity, including details on the reporting and compliance officer(s). This will ensure that a comprehensive register is available that relates specifically to this area of supervision. A modest processing fee for applications will be charged.

Compliance Officer/Reporting Officer

Entities will be required to appoint a Compliance Officer to ensure that all relevant AML/CFT requirements are met. This person will be a key liaison with the supervisory authority and can also be the Reporting Officer. Both the Compliance officer and Reporting officer must be identified at the time of registration and are required to be resident in Bermuda. Any changes must be reported to the Authority.

Costs of Supervision

Monitoring and enforcement of AML/CFT compliance will be carried out by staff within the Authority. It is intended that the costs of supervision will be spread across all entities and will be established in a manner consistent with that used for supervisory fees viz. consultation with industry, Ministerial and Parliamentary approval. Initially, the prescribed annual fees will cover the cost of supervision and consultation with industry will be done prior to implementation of the regime.

Any penalties received from breaches of the regulations will be retained by the Authority to cover costs and the annual fee will be reduced accordingly

Enforcement

The inspection powers to obtain information, produce documents and enter premises are consistent with the current prudential regime, where notice is required in some instances, but there are also specific circumstances where this notice does not have to be provided.

Breaches of regulations

Under this supervisory Act, the BMA is given the power to impose civil penalties to a maximum of \$500,000.

This supervisory Act sets down a procedure which must be followed before civil penalties are imposed. In particular the Authority must give a warning and notice. In addition, the Authority may publish its decision similar to provisions under the Investment Business Act 2003.

Certain breaches of the regulations will attract both civil and criminal penalties. However, the regulations have made it clear that if criminal penalties have been imposed, there can be no action taken to impose a civil sanction for the same breach(es). In addition, registration can be cancelled in cases where there is a material breach.

Failure to follow the requirements of this Act

Breaches of the supervisory Act are addressed in three ways. It will be a criminal offence if a person commits the following acts:

- Failure to appoint a compliance or reporting officer;
- Failure to register with the Authority;
- Failure to report changes to the registration;
- Holding out that as registered person the entity is licensed by the Authority;
- Obstruct the Authority from entering a premises.

In addition to prosecution of offences, this Bill introduces a new procedure whereby the Authority may apply to the Supreme Court for an order directing an institution to take particular action. This is seen as an important tool in strengthening the regime for AML/CFT compliance.

Thirdly, there is also provision for cancellation of the registration where it is determined that there would have been grounds to refuse the registration.

Appeals

Financial institutions have the right to appeal a decision of the Authority to impose a civil sanction for breach of the regulations or to refuse or to cancel the registration under the supervisory legislation. To allow for due process, any decision by the Authority does not come into effect until after the appeal period has expired or an appeal has been heard or withdrawn.

Prudential Supervision

It is proposed that additional changes will also be made to the regulatory legislation and framework to ensure that there is explicit reference to compliance with AML/CFT requirements. This will ensure that breaches of such requirements can be taken into account when applying the prudential standards for licensed entities. There will be consultation with industry in this regard at the appropriate time.

ATFA Amendment Act 2008

The key provisions under this Act are as follows:

- The definition of terrorism has been expanded to ensure consistency with the relevant international conventions on terrorism.
- Tipping off provisions have been added.
- The Act will expressly provide for regulations to be made to address systems and controls to prevent terrorist financing.
- Additional provisions have been added to expand the offences related to terrorist financing.

Consultation Process

The deadline for comments on the attached draft documents, as well as the material previously provided, 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. 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.

Prior to the end of May, meetings will be held with industry representatives to discuss the proposed framework, to get preliminary feedback on the material which was previously provided and to answer questions arising to date.

Following the June 10th deadline for industry responses, NAMLC will review all of the feedback provided and address any policy issues which are raised. It is then proposed that a meeting will be held with representatives of all industry bodies on **June 17th at 3pm** to provide an update on policy positions and to get further feedback for submission to the relevant Ministers. We would invite you to ensure that there is appropriate representation at this meeting so that key issues can be fully debated.

We certainly appreciate the time and effort that is being expended on this important project and look forward to continuing to work with you in this regard.

Details of the proposed approach to supervision and enforcement of AML/CFT requirements by the BMA will be provided in due course. Any other specific queries on

matters relating directly to the BMA approach can be directed to Mr. William Kattan:
Email: wkattan@bma.bm

Please note that electronic copies of these documents will be available on the Bermuda Government website www.gov.bm and on the Bermuda Monetary Authority website www.bma.bm.

Responses should be sent to:

National Anti Money Laundering Committee Office
c/o Mrs. Cheryl-Ann Lister
Global House
4th Floor
43 Church Street HM 12
Email: clister@gov.bm

With copy to Mr. Anthony Manders
Email: amanders@gov.bm

Consultation Documents

Draft Bill entitled “The Anti-Money Laundering and Anti-Terrorist Financing (Supervision and Enforcement) Act 2008”

Draft Bill entitled “Anti-Terrorism (Financial and Other Measures) Amendment Act” 2008