

WK Sixth draft 21 May 2008

A BILL
entitled
"THE ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING
(SUPERVISION AND ENFORCEMENT) ACT 2008"

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WHEREAS it is expedient to make provisions establishing supervisory authorities to monitor financial institutions and professionals and take measures for purposes of securing compliance by such persons with regulations made under the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004; to provide powers for the Authority to effectively discharge its functions as supervisory authority for financial institutions; and for connected matters:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

PART I

INTRODUCTORY

Short title and commencement

1. This Act may be cited as the Anti-Money Laundering and Anti-Terrorist Financing (Supervision and Enforcement) Act 2008 and 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 different provisions.

Interpretation

2. In this Act —

"Authority" means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

"compliance officer" means the person referred to in section 8;

"designated professional body" means a professional body designated by the Minister under section 4;

"financial institution" has the meaning given in section 7(1) of the Proceeds of Crime Act 1997;

"Minister" means the minister responsible for justice.

"officer" means an officer of the Authority duly authorised in that behalf and includes a member of its staff and an agent of the Authority;

"professional body" means —

- (a) the Bar Council established under the Bermuda Bar Act 1974 in relation to the relevant persons regulated by it;

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(b) the Institute of Chartered Accountants of Bermuda established under the Institute of Chartered Accountants of Bermuda Act 1973 in relation to the relevant persons regulated by it;

“regulations” means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Finance) Regulations 2008;

“relevant person” means a person to whom, in accordance with sections 49(4) (a) (i) of the Proceeds of Crime Act 1997 or section [] of the Anti-Terrorism (Financial and Other Measures) Act 2004, regulations apply;

“reporting officer” means the officer referred to in section 9;

“supervisory authority” in relation to any relevant person, means the supervisory authority specified for such a person by section 3.

Part II

SUPERVISION

Supervisory authorities

3. The following bodies are supervisory authorities for the purposes of this Part —

(a) the Bermuda Monetary Authority for financial institutions that carry on business in or from Bermuda;

(b) a designated professional body for the relevant persons regulated by it.

Designated professional bodies

4. (1) The Minister may by order subject to negative resolution procedure, designate a professional body as a supervisory authority for the purposes of section 3(b).

(2) The Minister shall not designate a professional body unless he is satisfied that that body is able to effectively discharge the duties specified under section 5.

Duties of supervisory authorities

5. (1) A supervisory authority must effectively monitor the relevant persons for whom it is the supervisory authority and take necessary measures for the purpose of securing compliance by such persons with regulations.

(2) A supervisory authority shall issue from time to time guidance as to compliance with the Proceeds of Crime Act 1997 and

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regulations thereunder and the Anti Terrorism (Financial and Other Measures) Act 2004 and regulations thereunder.

(3) A supervisory authority shall as soon as practicable after the end of each of its financial years, make to the Minister of Justice and publish in such manner as it thinks appropriate a report on its activities under this Act in that year.

(4) A supervisory authority which, in the course of carrying out any of its functions, knows or suspects that a person is or has engaged in money laundering shall as soon as practicable inform the FIA.

(5) A disclosure made under subsection (4) is not to be taken to breach any restriction, however imposed, on the disclosure of information.

Part III

SUPERVISION BY THE AUTHORITY

Functions of the Authority

6. The Authority shall have the functions conferred on it by section 5 and the duty generally to effectively monitor relevant persons for compliance with the regulations and to enforce compliance with their provisions.

Authority's statement of principles

7. (1) The Authority shall as soon as practicable after the coming into force of this Act, publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in exercising its power to cancel the registration of a relevant person;
- (b) in exercising its power to impose civil penalties; and
- (c) in exercising its power to obtain information, to require the attendance of persons and to require production of documents.

(2) If the Authority makes a material change to the principles it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

Compliance officer

8. (1) A relevant person (other than a sole trader) must appoint an individual as the compliance officer in respect of the financial services business being carried on by the relevant person who shall be resident in Bermuda.

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(2) A sole trader is the compliance officer in respect of his or her financial services business.

(3) The compliance officer's function is to monitor whether the enactments in Bermuda relating to money laundering or terrorist finance are being complied with in the conduct of the relevant person's financial services business.

(4) When a named individual has ceased to be the compliance officer, the relevant person must appoint another individual forthwith as compliance officer in respect of the financial services business being carried on by the relevant person.

(5) In the case of an individual appointed under subsection (1) or (4), the compliance officer is responsible to the relevant person.

(6) A relevant person must give the Authority written notice within one month after the date –

(a) an appointment under subsection (1) or (4) takes effect;
or

(b) an individual ceases to be the compliance officer.

(7) The notice must specify the name of that compliance officer and the date on which his appointment takes effect or he ceases to be the compliance officer.

(8) A compliance officer may also be appointed as a reporting officer.

(9) The requirement in subsection (1) applies in respect of any financial services business carried on by the relevant person on or after the date of commencement of this section.

Reporting officer

9. (1) A relevant person (other than a sole trader) must appoint an individual as the reporting officer in respect of the financial services business being carried on by the relevant person who shall be resident in Bermuda.

(2) The reporting officer's function is to receive and consider reports in accordance with section 46 of the Proceeds of Crime Act 1997 and Part 1 of Schedule I of the Anti-Terrorism (Financial and Other Measures) Act 2004.

(3) When a named individual has ceased to be the reporting officer, the relevant person must appoint another individual forthwith as the reporting officer in respect of the financial services business being carried on by the relevant person.

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(4) A relevant person must give the Authority written notice, within one month after the date –

- (a) an appointment under subsection (1) or (3) takes effect; or
- (b) a person ceases to be the reporting officer.

(5) The notice must specify the name of that reporting officer and the date on which his appointment takes effect or he ceases to be the reporting officer.

(6) A reporting officer may also be appointed as a compliance officer.

Duty to maintain register

10. (1) For the purpose of discharging its duties under section 5, the Authority shall establish and maintain a register of relevant persons in such form as it may determine.

(2) The Authority shall publish in such manner as it considers appropriate the name of every relevant person entered on the register.

Requirement to be registered

11. A person in respect of whom the Authority is required to establish and maintain a register under section 10 shall not carry on business unless he is included in the register.

Applications for registration in a register maintained under section 10

12. (1) A person in respect of whom the Authority is required to maintain a register under section 10 shall apply for registration in accordance with this section.

(2) An application may be in such form and provide such information as the Authority may specify.

(3) The information which the Authority may specify shall include—

- (a) the applicant's name and (if different) the name of the business;
- (b) his address;
- (c) the nature of the business; and
- (d) the name of the compliance officer and, if different, the reporting officer.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide, within 21 days beginning with the date of being requested to do so, such further

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information as it reasonably considers necessary to enable it to determine the application.

(5) If at any time after the applicant has provided the Authority with any information under subsection (2) or (4) —

- (a) there is a material change affecting any matter contained in that information; or
- (b) it becomes apparent to that person that the information contains a significant inaccuracy;

it must provide the Authority with details of the change or, as the case may be, a correction of the inaccuracy within 28 days beginning with the date of the occurrence of the change (or the discovery of the inaccuracy) or within such later time as may be agreed with the Authority.

(6) The obligation in subsection (5) applies also to material changes or significant inaccuracies affecting any matter contained in any supplementary information provided pursuant to that subsection.

(7) Any information to be provided to the Authority under this section shall be in such form or verified in such manner as it may specify.

Determination of applications under section 12

13. (1) The Authority may refuse to register an applicant for registration in a register maintained under section 10 only if—

- (a) any requirement of, or imposed under, section 13 has not been complied with;
- (b) it appears to the Authority that any information provided pursuant to section 12 is false or misleading in a material particular; or
- (c) the applicant has failed to pay an application fee imposed by him under section 20(1).

(2) The Authority must within 30 days beginning either with the date on which it receives the application or, where applicable, with the date on which it receives any further information required under section 12(4), give the applicant notice of—

- (a) its decision to register the applicant; or
- (b) the following matters—
 - (i) its decision not to register the applicant;
 - (ii) its reasons for its decision; and
 - (iii) the right to appeal under section 23.

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(3) The Authority shall, as soon as practicable after deciding to register a person give notice to the applicant of its decision and include him in the register.

(4) A person whose name is included in the register shall not, solely by virtue of such inclusion, represent to the public at large that it is authorised, licensed, registered or otherwise regulated by the Authority.

Cancellation of registration

14. The Authority may cancel the registration of a relevant person in a register maintained under section 10 if –

- (a) at any time after registration, it appears to it that it would have had grounds to refuse registration under section 13(1)(b);
- (b) a relevant person has been found to be in breach of a material provision of the regulations.

Procedure for cancelling registration

15. [1] Where the Authority proposes to cancel a person's registration it must give him notice of its proposal to cancel its registration ('warning notice') and —

- (a) the proposed date from which the cancellation is to take effect;
- (b) the reasons for its decision; and
- (c) the right to make representations to it within a specified period (which must not be less than 28 days).

(2) The Authority must then decide, within a reasonable period, whether to cancel a person's registration and it must give the person notice ('decision notice') —

- (a) of its decision not to cancel its registration; or
- (b) of the following matters—
 - (i) its decision to cancel its registration;
 - (ii) the reasons for its decision; and
 - (iii) the right to appeal under section 23.

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**Power to require information from, and attendance of, relevant and
connected persons**

16. (1) An officer may, by notice in writing to a relevant person or to a person connected with a relevant person, require the relevant person or the connected person, as the case may be—

- (a) to provide such information as may be specified in the notice;
- (b) to produce such recorded information as may be so specified; or
- (c) to attend before an officer at a time and place specified in the notice and answer questions.

(2) For the purposes of subsection (1), a person is connected with a relevant person if he is, or has at any time been, in relation to the relevant person, a person specified in subsection (9).

(3) An officer may exercise powers under this section only if the information sought to be obtained as a result is reasonably required in connection with the exercise by the Authority of its functions under this Act.

(4) Where an officer requires information to be provided or produced pursuant to subsection (1) (a) or (b)—

- (a) the notice must set out the reasons why the officer requires the information to be provided or produced; and
- (b) such information must be provided or produced—
 - (i) before the end of such reasonable period as may be specified in the notice; and
 - (ii) at such place as may be so specified.

(5) In relation to information recorded otherwise than in legible form, the power to require production of it includes a power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.

(6) The production of a document does not affect any lien which a person has on the document.

(7) A person shall not be required under this section to provide or produce information or to answer questions which he would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the Supreme Court, except that an attorney may be required to provide the name and address of his client.

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(8) Section 41E of the Proceeds of Crime Act 1997 applies with appropriate modifications to statements made by a person in compliance with a requirement imposed on him under subsection (1)(c) as it applies to statements made by a relevant institution in response to a customer information order.

(9) For the purposes of subsection (2), the following are connected persons —

- (a) if the relevant person is a body corporate (“BC”), a person who is or has been—
 - (i) an officer or manager of BC or of a holding company of BC;
 - (ii) an employee of BC;
 - (iii) an agent of BC or of a holding company of BC;
- (b) if the relevant person is a partnership, a person who is or has been a member, manager, employee or agent of the partnership.
- (c) if the relevant person is an unincorporated association of persons which is not a partnership, a person who is or has been an officer, manager, employee or agent of the association.
- (d) If the relevant person is an individual, a person who is or has been an employee or agent of that individual.

(10) In this section “holding company” has the meaning given in section 86 of the Companies Act 1981.

Right of entry to obtain information and documents

17. (1) Any officer of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a relevant person on whom a notice has been served under sections 16(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 16 (1).

(2) An officer may on producing if required evidence of his authority, enter any premises occupied by a relevant person on whom a notice could be served under section 16 (1) for the purpose of obtaining there such information or documents, but the Authority shall not authorise any person to act under this subsection unless it has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

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(3) Any person who intentionally obstructs a person exercising rights conferred by this section shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for six months or to both.

Entry to premises under warrant

18. (1) A magistrate may issue a warrant under this section if satisfied on information on oath given by an officer that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is —

- (a) that there is on the premises specified in the warrant recorded information in relation to which a requirement could be imposed under section 16(1)(b); and
- (b) that if such a requirement were to be imposed —
 - (i) it would not be complied with; or
 - (ii) the recorded information to which it relates would be removed, tampered with or destroyed.

(3) The second set of conditions is—

- (a) that a person on whom a requirement has been imposed under section 16(1)(b) has failed (wholly or in part) to comply with it; and
- (b) that there is on the premises specified in the warrant recorded information which has been required to be produced.

(4) The third set of conditions is —

- (a) that an officer has been obstructed in the exercise of a power under section 17; and
- (b) that there is on the premises specified in the warrant information or documents which could be obtained under section 17(2).

(5) A magistrate may issue a warrant under this section if satisfied on information on oath given by an officer that there are reasonable grounds for suspecting that —

- (a) an offence under this Act has been, is being or is about to be committed by a relevant person; and
- (b) there is on the premises specified in the warrant recorded information relevant to whether that offence has been, or is being or is about to be committed.

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(6) A warrant issued under this section shall authorise any police officer not below the rank of inspector together with an officer of the Authority —

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any recorded information or anything appearing to be recorded information specified in the warrant or to take, in relation to any such recorded information, any other steps which may appear to be necessary for preserving it or preventing interference with it;
- (c) to take copies of, or extracts from, any recorded information specified in the warrant;
- (d) to require any person on the premises to provide an explanation of any recorded information appearing to be of the kind specified in the warrant or to state where it may be found;
- (e) to use such force as may reasonably be necessary.

Failure to comply with information requirement

19. (1) If, on an application made by the Authority it appears to the Supreme Court that a person (the “information defaulter”) has failed to do something that he was required to do under section 16(1), the Court may make an order under this section.

(2) An order under this section may require the information defaulter —

- (a) to do the thing that he failed to do within such period as may be specified in the order;
- (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.

(3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons which is not a partnership, the order may require any officer of the body corporate, partnership or body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.

Costs of supervision

20. (1) A relevant person shall, as may be prescribed under the Bermuda Monetary Authority Act 1969, pay —

- (a) a registration fee on its registration in the register maintained under section 10; and

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(b) an annual fee on or before 30 April in every year after the year in which it has been registered.

(2) The annual fee payable under subsection (1) shall be a proportion of the fee from the period from the date of registration to 31 December next following, counting part of a month as one month for the purpose of calculating the annual fee.

(3) The Authority may recover any fee as a debt owing to it in any court of competent jurisdiction.

(4) The Authority shall apply amounts paid to it by way of penalties imposed under section 22 towards expenses incurred in carrying out its functions under this Act or for any incidental purpose.

Civil penalties and appeals

Power to impose civil penalties

21. (1) The Authority may impose a penalty of such amount not exceeding \$500,000 as it considers appropriate on a relevant person supervised by it who fails to comply with any requirement imposed by or under the regulations and, for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Authority shall not impose a penalty on a person under subsection (1) where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) In deciding whether a person has failed to comply with a requirement of the regulations, the Authority must consider whether he followed any relevant guidance which was at the time—

- (a) issued by the Authority;
- (b) approved by the Minister; and
- (c) published in the Gazette.

(4) A penalty imposed under this section is payable to the Authority.

Procedure for imposing penalties

22. (1) Where the Authority proposes to impose a penalty under section 21, it must give the person notice of (‘warning notice’) —

- (a) its proposal to impose the penalty and the proposed amount;
- (b) the reasons for imposing the penalty; and

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(c) the right to make representations to it within a specified period (which may not be less than 28 days).

(2) The Authority must then decide, within a reasonable period, whether to impose a penalty and it must give the person notice ('decision notice') —

(a) of its decision not to impose a penalty; or

(b) of the following matters—

(i) its decision to impose a penalty and the amount;

(ii) the reasons for its decision; and

(iii) the right to appeal under section 23.

(3) The Authority shall publish its decision to impose a penalty under section 21 in such manner as it considers appropriate.

(4) But the Authority shall not publish its decision whilst such decision is subject to appeal under section 23.

Appeals

23. (1) A person may appeal a decision by the Authority –

(a) not to register an applicant in a register maintained under section 10;

(b) to cancel the registration of a relevant person under section 14; or

(c) to impose a penalty under section 21.

(2) An appeal from a decision by the Authority shall lie to the appeal tribunal established under section 24.

(3) A decision appealed against under this section shall not have effect—

(a) until the end of the period within which the appeal can be brought; and

(b) if such an appeal is brought, until it is determined or withdrawn.

Constitution of tribunal

24. (1) A tribunal shall consist of a chairman, or, in his absence, a deputy chairman, and two other members.

(2) Subject to subsection (3) the Minister shall appoint the chairman and deputy chairman for a period not exceeding three years which may be renewed.

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(3) The chairman and deputy chairman shall be barristers and attorneys of not less than ten years standing with relevant experience.

(4) The Minister shall appoint a panel of not less than five persons with relevant experience to serve as members of the appeal tribunal.

Determination of appeals

25. (1) Where an appeal is brought under the provisions of this Act the chairman shall nominate two other members from the panel of members, who together with him shall constitute the tribunal which shall determine the appeal.

(2) A tribunal hearing an appeal under section 23 has the power to —

- (a) quash or vary any decision of the Authority, including the power to reduce any penalty to such amount (including nil) as they think proper; and
- (b) substitute their own decision for any decision quashed on appeal.

Procedure and evidence

26. (1) The Minister may make regulations with respect to appeals and those regulations may in particular make provision —

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) for requiring an appellant or the Authority to disclose or allow the inspection of documents in his or its custody or under his or its control;
- (d) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (e) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (f) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;

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(g) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman of the tribunal; and

(h) as to any other matter connected with such appeals.

(2) Regulations made under subsection (1) shall be subject to negative resolution procedure.

(3) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(4) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable —

(a) on summary conviction to a fine of \$25,000 or to imprisonment for six months or to both;

(b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both.

Decisions of tribunal

27. (1) A decision of the tribunal may be taken by a majority.

(2) The decision must—

(a) state whether it was unanimous or taken by a majority;

(b) be recorded in a document which—

(i) contains a statement of the reasons for the decision; and

(ii) is signed and dated by the chairman or deputy chairman as the case maybe.

(3) The tribunal must—

(a) inform each party of its decision; and

(b) as soon as reasonably practicable, send to each party a copy of its decision.

Costs

28. (1) Subject to subsections (2) and (3), a tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

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(2) If the tribunal considers that a party to any proceedings on an appeal has acted vexatiously, frivolously or unreasonably it may order that party to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings.

(3) If, in any proceedings on an appeal, the tribunal considers that a decision of the Authority which is the subject of the appeal was unreasonable it may order the Authority to pay to another party to the proceedings the whole or part of the costs or expenses incurred by the other party in connection with the proceedings.

(4) A person may appeal to the Supreme Court a decision by the tribunal

(5) An appeal to the Supreme Court shall be on a point of law only.

Criminal offences

Offences

29. (1) A person who fails to comply with any requirement imposed under sections 8(6), 9(4), 11, 12(5), or 13(4) is guilty of an offence and liable—

(a) on summary conviction, to a fine of \$25,000 or imprisonment for a term of 12 months or to both;

(b) on conviction on indictment, to a fine of \$100,000 or to imprisonment for a term of five years or to both.

(2) A person is not guilty of an offence under this section if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Restricted Information

Restricted information

30. (1) Except as provided by section 31 —

(a) no person who under or for the purposes of this Act receives information relating to the business or other affairs of any person; and

(b) no person who obtains such information directly or indirectly from a person who has received it as aforesaid,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.

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(2) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources, or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Any person who discloses information in contravention of this section is guilty of an offence and is liable on summary conviction to a fine of \$50,000 or to imprisonment for two years or to both.

Permitted disclosure

31. Information obtained by the Authority in connection with the exercise of its functions may be disclosed by the Authority if the disclosure is for the purpose of enabling or assisting —

- (a) the Authority to discharge its functions under this Act or any statutory provision;
- (b) the Financial intelligence Agency or the Bermuda Police Service in the discharge of their functions under any statutory provision;
- (c) to the Minister of Finance for the purpose of enabling or assisting the Minister to discharge regulatory functions.

Transitional

32. A relevant person who on the day of commencement of this Act is carrying on business may continue to carry on business without being included in the register (as required by section 11) —

- (a) for a period not exceeding six months beginning with that date; and
- (b) if within that period application is made for registration, until that application is disposed of or withdrawn.

Consequential amendment

33. Section 3 (1) (bd) of the Bermuda Monetary Authority Act 1969 is repealed and the following substituted —

- “(bd) to perform the functions conferred on it by section 5 of the Anti- Money Laundering and Anti-Terrorist Financing (supervision and Enforcement) Act 2008;”.

**THE ANTI-MONEY LAUNDERING AND ANTI-TERRORIST
FINANCING (SUPERVISION AND ENFORCEMENT) ACT 2008**

**BERMUDA MONETARY AUTHORITY (MONEY LAUNDERING ENFORCEMENT AND
SUPERVISION) BILL 2008**

EXPLANATORY MEMORANDUM