



# **BERMUDA MONETARY AUTHORITY**

CONSULTATION PAPER  
ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING  
SUPERVISORY FEES

**September, 2008**

## **GLOSSARY**

AML	Anti-Money Laundering
AMLATF(SAE) Bill	Anti-Money Laundering and Anti-Terrorist Financing (Supervision and Enforcement) Bill 2008
ATF	Anti-Terrorist Financing
CFATF	Caribbean Financial Action Task Force
CTF	Combating Terrorist Financing
BMA	Bermuda Monetary Authority
FATF	Financial Action Task Force
Financial Institution	Has the meaning assigned to it by section 2 of the proposed Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.
IMF	International Monetary Fund
LSE	Legal Service & Enforcement Department
POC(AMLATF) Regs	Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008

## **INTRODUCTION**

- 1.1. During 2007 Bermuda's AML/ATF framework was the subject of a review by the IMF which assessed our compliance with the FATF 40 Recommendations on the prevention of money laundering and the 9 Special Recommendations on combating terrorist financing. The IMF completed a Detailed Assessment Report which was adopted by the CFATF in January 2008.
- 1.2. The IMF made a recommendation that legislative changes be enacted to establish an explicit mandate for the Authority to monitor financial institutions for compliance with AML/ATF obligations and should enhance its staff capacity to undertake these responsibilities.
- 1.3. As a result of the IMF Detailed Assessment Report and its recommendations, it was proposed that legislation be enacted or amended to enhance Bermuda's AML/ATF framework in order to give effect to such recommendations.
- 1.4. Following preliminary consultation with industry it was concluded that the BMA will not levy a separate fee on licensed firms for AML/ATF supervision but will revise existing fee levels to accommodate costs of our new AML/ATF responsibilities.
- 1.5. The Authority is consulting on its proposed AML/ATF supervisory fees through the publication of this consultative paper. This approach is in line with our commitment to transparency and to seek as wide as possible set of views on our proposed AML/ATF regime. This paper sets out initial proposals; please note that we will reflect carefully on the views we receive before finalising all proposals and sending them to the Ministry of Finance for the Minister's consideration.
- 1.6. This consultation paper sets out proposals for supervisory fees, to be paid by licensed financial institutions. Financial institutions falling within the scope of the new AML/ATF legislation that are exempt from licensing provisions under applicable legislation will be required to register and pay a nominal registration fee. Supervisory fees for these exempted entities will be assessed following a review of the size and risk profile of the group. This assessment will take place during the first year of operation of the AMLATF(SAE) Bill. Proposed fees will then be presented for consultation in a separate paper next year.
- 1.7. Any amendments to the current fees will be introduced via legislative amendment therefore the proposals below are subject to the final agreement of the Minister of Finance and Parliamentary approval.
- 1.8. The Authority welcomes comments on these proposals as outlined in this paper, which should be submitted in writing to Alan Cleave (acleave@bma.bm) by close of business Friday 10th October 2008. The BMA intends to finalise these proposals to allow the revised fees due in 2009 to be collected 31st March 2009.

## **FEES FOR ANTI-MONEY LAUNDERING & ANTI-TERRORIST FINANCING**

- 2.1 This section discusses the fee levels for existing licensed firms who are within the scope of the new AML/ATF legislation. As discussed with industry representatives during the course of consultation on this legislation, the BMA will not levy a separate fee for AML/ATF supervision for these firms but will revise existing fee levels to meet the costs of our new responsibilities.

- 2.2 The AMLATF(SAE) Bill lays out a framework within which the BMA will carry out its duties. The Bill provides for the BMA to work within a separate AML/ATF framework; which provides for supervision and enforcement, including powers to impose monetary penalties & costs and a review and/or appeal process.
- 2.3 Providing the BMA with the powers to impose monetary penalties is based on the premise that it will deter breaches of the regulations and encourage high levels of compliance with the AML/ATF framework. A unit of the BMA will be tasked with supervision of AML/ATF compliance and this unit will perform its duties in a manner similar to supervisory units by carrying out off-site and on-site assessments.
- 2.4 In the course of such on-sites the unit would review inter alia, AML/ATF policies, procedures, systems and controls, hold discussions with senior managers, identify deficiencies and make recommendations for remedial action. In the event management ignores the advice of the unit and continues to breach the regulations the unit would prepare a report and make recommendations to a decision making committee for enforcement action.
- 2.5 To carry out monitoring, a team from LSE consisting of two or three persons (depending on the size and nature of the institution being examined) will conduct the on-site assessments. Carrying out these functions will require an increased head count in 2009 of four employees comprising specialist investigating staff and a legal officer experienced in enforcement proceedings. The fee proposals below are designed to offset these incremental staffing costs and to provide for the possible use of external counsel in contentious enforcement cases.
- 2.6 The introduction of the new AML/ATF framework is crucial in order that the BMA assist in ensuring that Bermuda has a strong and effective regime for the combating of money laundering and terrorist financing.
- 2.7 The Authority is presently consulting on a draft Statement of Principles for its approach to AML/ATF enforcement.

**Table 3**

**Proposed Banking, Trust & Investments Supervisory Fee Levels**

<b><u>Sector</u></b>	<b><u>Proposed 2009 Fee</u></b>
<b>Banks</b>	
- BDCA License Fees Group A	\$16,500
- BDCA License Fees Group B	\$110,000
- BDCA License Fees Group C	\$220,000
<b>Investment Business Act</b>	
- Licensing Fees Group A	\$1,375
- Licensing Fees Group B	\$2,750
- Licensing Fees Group C	\$5,500
- Licensing Fee Consolidated	\$220,000

**Money Service Business**

- Annual License Fee \$4,500

**Trust Company**

- Licensing Fees Corporate A \$11,000

- Licensing Fees Corporate B \$19,250

- Licensing Fees Corporate C \$33,000

**Investment Fund Administrators**

- Licensing Fees \$8,250

**Investment Funds**

-Licensing Fees – Exempted \$600

-Licensing Fees – Institutional \$850

-Licensing Fees – Standard \$1,350

2.9 The proposed fees for insurers are presented in a separate consultation document.

**CONSULTATION QUESTIONS**

3.1 In responding to this consultation paper, you are asked to consider the following questions, in addition to any other comments they may wish to make. Comments must be received by the BMA by the close of business Friday 10<sup>th</sup> October 2008 (see Introduction section for contact details).

Q.1 Do you agree that the objective of AML/ATF compliance with international standards is a major jurisdictional priority which requires adequate funding?

Q.2 Do you broadly agree with the proposals for fee increases to cover the incremental costs of AML/ATF supervision?

Q.3 If the answer to Q.2 is 'no', what alternatives would you propose, and what would be the rationale?

Q.4 Are there any other issues – not covered above – that you wish to comment on?