

THE BERMUDA MONETARY AUTHORITY

The Anti-Money Laundering and Anti-Terrorist Financing (Supervision and Enforcement) Bill 2008

**CONSULTATION PAPER
ON AUTHORITY'S SUPERVISORY PROCEDURES AND DRAFT
STATEMENT OF PRINCIPLES**

August 2008

The Anti-Money Laundering and Anti-Terrorist Financing (Supervision and Enforcement) Bill 2008

Consultation Paper by the BMA

CONTENTS

CONSULTATION PAPER

Introduction	Page 3
AML/CFT Unit	Page 4
Risk Based Approach	Page 4
Monitoring of Financial Institutions	Page 5
Preparation and Presentation of Enforcement Cases	Page 7

APPENDIX 1

STATEMENT OF PRINCIPLES

Introduction	Page 9
Exercise of Enforcement Powers	Page 9
Cancellation of Registration	Page 10
Civil Fines	Page 11
Factors Relevant to a Decision to Impose a Fine	Page 11
Factors Relevant to a Decision on the Amount of Fine	Page 13
Multi Jurisdiction – Enforcement Action	Page 19
Exercise of Powers to Obtain Information, Right of Entry and Entry to Premises Under Warrant	Page 20

INTERNAL ENFORCEMENT PROCESSES

Proposed Framework	Page 22
---------------------------	----------------

The Anti-Money Laundering and Anti-Terrorist Financing (Supervision and Enforcement) Bill 2008

CONSULTATION PAPER

Introduction:

1. Under clauses 5 and 6 of the 2008 Bill, the Authority is charged with the duty to effectively monitor financial institution's compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the "Regulations") and to enforce compliance with their provisions. The Regulations define the scope of institutions falling within the definition of financial institutions on whom the obligation to comply with the Regulations fall. The Authority will also be issuing guidance which under the provisions of section 49A of the Proceeds of Crime Act 1997 (as amended by the Proceeds of Crime Amendment Act 2008), section 12B of the Anti-Terrorism (Financial and Other Measures) Act 2004 (as amended in 2008), regulation 19 of the Regulations, and clause 21 (3) of the 2008 Bill; which if followed, would be taken into account in determining whether a person is in breach of a provision of the Proceeds of Crime Act 1997, the Anti Terrorism (Financial and Other Measures) Act 2004, or the Regulations. The Authority has drafted guidance in relation to these matters in April of this year and the Authority is currently consulting on them. These will be further revised once the consultation period is closed (end of August 2008).

2. The Bill also makes provision for the Authority to issue a statement of principles in relation to the exercise of certain powers. These are set out in clause 7 of the 2008 Bill. Under it, the Authority is required to publish a statement of principles ("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.

Appendix 1 to this paper sets out a proposed framework of the Statement of Principles.

3. This paper sets out the Authority’s thinking on how it proposes to administer the legislation and discharge its responsibilities under the 2008 Bill.

4. In addition to the statutory AML guidance under the legislation, the Authority will issue general guidance and advice to financial institutions and will seek to develop a co-operative working relationship with all relevant persons based on clear, consistent and transparent processes.

AML/CFT Unit

5. In order to carry out its functions under clause 6 of the 2008 Bill, the Authority will establish a dedicated anti-money laundering and anti-terrorist financing unit (“the AML/CFT Unit”) working under the direction of the Director, Legal Services and Enforcement. The unit will be comprised of a small number of experienced officers assigned to AML/CFT duties and other Authority enforcement duties. It is the Authority’s expectation that the AML/CFT Unit will work closely with financial institutions in developing best practice and general guidance (not to be confused with the AML/CFT guidance) as to compliance with the legislation and enable us together to combat money laundering and terrorist financing.

Risk based approach

6. The Authority will use a ‘risk based approach’ to determine which entities pose the highest risk of money laundering and terrorist financing that would warrant close monitoring by the Authority. The factors that would be considered in assessing the risk include an evaluation of the following criteria:

- (a) Value & volume of transactions (turnover) - based on the last completed financial year for which accounts are available.

- (b) Geographical spread of business - the countries outside Bermuda where a person does business.
 - (c) Customer types - the types of customers with whom an institution deals with.
 - (d) Products and services – these being an indication of the nature of the products or services that account for a financial institution’s business’ turnover.
7. To enable the Authority to conduct a risk assessment, the Authority will collect this information from financial institutions on registration under the 2008 Bill. In relation to financial institutions that are in scope of the AML/CFT legislation and who are otherwise licensed by the Authority under the regulatory acts, our expectation is that this information would be available in the Authority’s files, but if not, the Authority would request institutions to provide it.

Monitoring of financial institutions

8. As with prudential supervision, AML/CFT monitoring will comprise both offsite and onsite inspections.
9. Offsite monitoring would not entail a visit to the premises, but, as with offsite monitoring for prudential purposes, would be conducted by exchange of correspondence with the financial institution beginning with a questionnaire. The questionnaire would seek to elicit from the financial institution information about its compliance framework.
10. Onsite inspections are routine regulatory inspections conducted by the Authority, which require its officers to examine the books, records and controls of an institution and to hold discussions with its senior management on the financial institution’s compliance framework. The number of visits to any institution would be determined by the Authority’s risk assessment of the institution and its record of compliance. Financial institutions whose business presents an inherently high risk to money laundering or

terrorist finance would be subject to routine visits scheduled about every three years; institutions whose business presents an inherently low risk to money laundering and terrorist finance would be assessed on a sample basis. However if evidence were to come to light about a problem institution, an onsite visit would take place as soon as practicable.

11. The Authority would also use the results of the national risk assessment on the vulnerability of Bermuda's financial institutions to money laundering and terrorist financing to determine the financial sectors posing the greatest risk. This would assist in determining the level of monitoring and the frequency of on-site visits for each class of institution. Visits would be tailored to address the risk associated with each financial institution or class of financial institution being monitored or be tailored to focus on only one particular aspect of AML/CFT such as customer due diligence or reliance on third parties.

12. In relation to licensed financial institutions, the AML/CFT Unit would generally not seek to conduct an onsite visit alone, but would do so as part of a prudential onsite visit conducted on the institution by the Authority. However, the Authority does plan to conduct specialist AML on-sites for groups of firms from time to time. A financial institution subject to a prudential on-site examination that includes an AML/CFT component would not normally be the subject of a specialist AML/CFT on-site visit during the same year. A financial institution subject to a specialist AML/CFT on-site visit would receive 'credit' for this if they are the subject of a prudential on-site visit within one year of a specialist AML/CFT visit and there were no adverse findings requiring remedial action.

13. On-sites on financial institutions not subject to prudential supervision would normally be conducted by the AML/CFT Unit alone, as would visits to any institutions with an inherent high risk to money laundering or terrorist financing or one that has been identified as a problem institution. But it is often the case that the nature of the

AML/CFT risk may also give rise to prudential concerns, and could attract a prudential onsite visit from a team comprising personnel from both supervisory and AML/CFT Units.

14. Where a financial institution has outsourced its compliance obligations under the Regulations to another licensed entity, the Authority would not normally conduct an offsite or onsite visit on the institution but on the entity to whom it has outsourced its obligations. This would for example apply to operators of investment funds who outsource regulatory compliance to fund administrators.

Preparation and presentation of enforcement cases

15. At the conclusion of all monitoring and on-site visits, a report would be prepared outlining the Authority's findings and conclusions. This would be communicated to the examined institution. Where deficiencies are identified, the Authority would make recommendations for remedial action to be taken by the financial institution. Where an institution fails to take any such action a report with supporting evidence of the deficiencies so identified would be prepared and would form the basis of a recommendation for enforcement action.

16. It should be emphasized that the Authority would normally only take enforcement action if an institution fails without sufficient cause to take remedial action to remedy deficiencies identified by the Authority in compliance with AML/CFT Regulations. However, the Authority will act immediately if the breaches are so serious as to warrant immediate enforcement action.

17. Where the Authority alleges that a financial institution is in breach of the Regulations, the AML/CFT Unit would prepare a report on the matter together with supporting evidence and would forward it to senior management of the Authority for their review. Senior management would review the file and make a determination on whether there is a case to answer. If such a determination were made, the statutory

procedures on the issue of notices to financial institutions would be followed. This would entail the issue in the first instance of a ‘Warning Notice’ to the financial institution outlining the Authority’s intention to cancel registration or to impose a penalty and the amount, as the case may be, the reason for the issue of the warning notice, and the institution’s right to make representations on the matter to the Authority within 28 days. Upon receipt of representations from financial institutions, or on the expiry of the time limit for representations, senior management would transmit to a committee of the Board of Directors the report alleging the breach, the supporting evidence and any representations from the financial institution. The Committee of the Board, after reviewing the evidence and representations, would issue its decision which would be communicated to the institution in a ‘Decision Notice’. The notice would inform the financial institution of the Authority’s decision (whether to cancel or not cancel the registration or to impose or not to impose a monetary penalty, the amount of the penalty, as the case may be), the reasons for the decision, and the financial institution’s right of appeal to an appeals tribunal.

18. The 2008 Bill provides for a maximum fine of \$500,000 and the amount levied would be, in each particular instance, consistent with the principle that the fine must be appropriate, i.e. “effective, proportionate and dissuasive. The Statement of Principles sets out how the Authority would apply these provisions in some detail on the matter.

19. A financial institution that is aggrieved with a decision of the Authority on the matter would have a right of appeal (under clause 22 of the 2008 Bill) to an appeals tribunal (constituted in accordance with clause 24 of the 2008 Bill) in cases where the Authority decides not to register an applicant or cancel the registration of a financial institution or impose a financial penalty on it. The appeals tribunal would have wide ranging powers and could quash or vary any decision of the Authority including the power to reduce any penalty imposed by the Authority, and substitute its own decision for the decision appealed against. Appeals from decisions of the appeal tribunal would lie to the Supreme Court on a point of law only.

APPENDIX 1

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

Statement of Principles

Introduction

The 2008 Bill makes provision for the Authority to issue a statement of principles in relation to the exercise of certain powers. These are set out in clause 7 of the 2008 Bill. Under it, the Authority is required to publish 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.

Exercise of enforcement powers

Where the Authority in the course of its supervision identifies breaches of the regulations by a financial institution, the Authority would normally seek remedial action by the institution before resorting to the use of its enforcement powers under the 2008 Bill. The Authority would work with an institution to assist it in implementing corrective measures and give advice in relation to any perceived weaknesses in its systems and controls. In circumstances where such actions have failed to remedy identified deficiencies or alleged breaches are so serious as to warrant the immediate exercise of enforcement powers, then the Authority would not hesitate to do so.

The powers at the disposal of the Authority are the power to cancel the registration of an institution and the power to levy a civil fine.

Cancellation of registration

In general terms the Authority would not seek to exercise its powers under the 2008 Bill to cancel the registration of an institution that is also licensed, but would use its prudential powers and the procedures set out under the regulatory acts to revoke its licence. The Authority takes the view that if an infringement of the Regulations is serious enough to warrant the cancellation of registration under the 2008 Bill, it would in all likelihood be serious enough to warrant the revocation its licence under the applicable prudential legislation.

The Authority recognizes that cancellation of registration or the revocation of a licence is a very serious matter for an institution. The Authority would not lightly embark on such a course of action, except in exceptional cases where the breach is so egregious as to warrant a closure of a business. An extreme example would be a case where a business falling within a high risk category has absolutely no AML/CFT controls whatsoever. Another would be a business that is found to have been established as a front for money laundering operations and is not otherwise serving any legitimate purposes. A business may also be at risk of having its licence cancelled if, having been found to be in serious breach of the regulations, it pays no heed to Authority requests for remedial action but deliberately continues to flout the Regulations. What would tip the balance in favour of cancellation of its registration or revocation of its licence would be the risk it presents in relation to money laundering or terrorist financing.

The Authority is required to follow the procedures laid out at clause 15 of the 2008 Bill before it could cancel the registration of a financial institution. These provide for the giving of a notice to a financial institution of its intention to cancel the registration and the reasons for cancellation, for the financial institution to make representations to the Authority about its proposed cancellation and for the giving of

notice of its decision on the matter, the reasons for it and its ability to appeal the decision to the appeal tribunal.

Civil fines

In relation to the exercise of its powers to impose civil fines for breaches of the Regulations, the Authority is able to levy a maximum fine of \$500,000 but the circumstances in which the maximum amount would be levied would be rare and exceptional.

The Authority will consider the full circumstances of each case when determining whether or not to impose a fine. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive and not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

Factors relevant to a decision to impose a fine

The factors that the Authority will take into account in determining whether or not to impose a fine include the following:

- (1) The nature, seriousness and impact of the suspected breach, including:
 - (a) whether the breach was deliberate or reckless;
 - (b) the duration and frequency of the breach;
 - (c) whether the breach reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of a relevant person's business;
 - (d) the nature and extent of any money laundering or terrorist financing facilitated, occasioned or otherwise attributable to the breach; and
 - (e) whether there are a number of smaller issues, which individually may not justify disciplinary action, but which do so when taken collectively.

- (2) The conduct of the relevant person after the breach, including:
 - (a) how quickly, effectively and completely the relevant person brought the breach to the attention of the Authority or another relevant regulatory authority;
 - (b) the degree of co-operation the relevant person showed during the investigation of the breach;
 - (c) any remedial steps the relevant person has taken in respect of the breach;
 - (d) the likelihood that the same type of breach (whether on the part of the relevant person under investigation or others) will recur if no action is taken;
 - (e) whether the relevant person concerned has complied with any requirements of the Authority; and
 - (f) the nature and extent of any false or inaccurate information given by the relevant person and whether the information appears to have been given in an attempt to knowingly mislead the Authority.

- (3) The previous disciplinary record and compliance history of the relevant person including:
 - (a) whether the Authority has taken any previous disciplinary action resulting in adverse findings against the relevant person;
 - (b) whether the Authority has previously requested the relevant person to take remedial action, and the extent to which such action has been taken; and
 - (c) the general compliance history of the relevant person.

- (4) Conduct consistent with the Authority's guidance. The Authority will not take action against a relevant person for conduct that it considers to be consistent with guidance or other materials published by the Authority which was current at the time of the conduct in question.

- (5) Action taken by the Authority in previous similar cases.

(6) Action taken by other regulatory authorities. Where other regulatory authorities propose to take action in respect of a breach which is under consideration by the Authority, the Authority will consider whether the other authority's action would be adequate to address the Authority's concerns, or whether it would be appropriate for the Authority to take its own action.

Factors relevant to a decision on the amount of fine

Any fine imposed by the Authority must be appropriate. Clause 21 of the Bill defines this to mean “effective, proportionate and dissuasive”. The Authority will consider all the relevant circumstances of a case when it determines the level of a financial penalty that is appropriate and that is in proportion to the breach concerned. The list of factors outlined is not exhaustive and not all of these factors may be relevant in a particular case, and there may be other factors, not included below, that are relevant.

The Authority will not apply a tariff of penalties for different kinds of breach. This is because there will be very few cases in which all the circumstances of the case are essentially the same and because of the wide range of breaches in respect of which the Authority may impose a financial penalty. The Authority considers that, in general, the use of a tariff for particular breaches would inhibit the flexible and proportionate use of its powers.

The following factors may be relevant to determining the appropriate level of financial penalty to be imposed on a relevant person under the 2008 Bill:

(1) *Deterrence*. When determining the appropriate level of penalty, the Authority will have regard to the principal purpose for which it imposes a financial penalty, namely to encourage a high degree of compliance with the Regulations, deterring persons who have committed breaches from committing further breaches and deterring other persons from committing similar breaches.

(2) *The nature, seriousness and impact of the breach in question.* The Authority will consider the seriousness of the breach in relation to the nature of the regulation breached.

The following considerations are among those that may be relevant:

- (a) the duration and frequency of the breach;
- (b) whether the breach revealed serious or systemic weaknesses in the relevant person's procedures or of the management systems or internal controls relating to all or part of a relevant person's business;
- (c) the nature and extent of any money laundering or terrorist financing facilitated, occasioned or otherwise attributable to the breach.

(3) *The extent to which the breach was deliberate or reckless:*

The Authority will regard as more serious a breach which is deliberately or recklessly committed. The matters to which the Authority may have regard in determining whether a breach was deliberate or reckless include, but are not limited to, the following:

- (a) whether the breach was intentional, in that the relevant person intended or foresaw the potential or actual consequences of its actions;
- (b) where the relevant person has not followed its own internal procedures and/or Authority guidance, the reasons for not doing so;
- (c) where the relevant person has taken decisions beyond its or his field of competence or authority, the reasons for the decisions and for them being taken by that person; and
- (d) whether the relevant person has given no apparent consideration to the consequences of the behaviour that constitutes the breach.

(4) *Whether the person on whom the penalty is to be imposed is an individual.* When determining the amount of a financial penalty to be imposed on an individual, the Authority will take into account that individuals will not always have the resources of a

body corporate, that enforcement action may have a greater impact on an individual, and further, that it may be possible to achieve effective deterrence by imposing a smaller penalty on an individual than on a body corporate. The Authority will also consider whether the status, position and/or responsibilities of the individual are such as to make a breach committed by the individual more serious and whether the penalty should therefore be set at a higher level.

(5) The size, financial resources and other circumstances of the relevant person on whom the penalty is to be imposed:

- (a) The Authority may take into account whether there is verifiable evidence of serious financial hardship or financial difficulties if the relevant person were to pay the level of penalty appropriate for the particular breach. The Authority regards these factors as matters to be taken into account in determining the level of a financial penalty, but not to the extent that there is a direct correlation between those factors and the level of penalty.
- (b) The purpose of a penalty is not to render a relevant person insolvent or to threaten the relevant person's solvency. Where this would be a material consideration, the Authority will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to a relevant person with lower financial resources; but if a relevant person reduces its solvency with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to third parties, the Authority will take account of those assets when determining the amount of a penalty.
- (c) The degree of seriousness of a breach may be linked to the size of the entity. For example, a systemic failure in a large entity with a high volume of business, over a protracted period may be more serious than breaches over similar periods in an entity with a smaller volume of business.

(d) The size and resources of a relevant person may also be relevant in relation to mitigation, in particular what steps the relevant person took after the breach had been identified; the Authority will take into account what it is reasonable to expect from a relevant person in relation to its size and resources, and factors such as what proportion of a relevant person's resources were used to resolve a problem.

(6) *Difficulty of detecting the breach.* A relevant person's incentive to commit a breach may be greater where the breach is, by its nature, harder to detect. The Authority may, therefore, impose a higher penalty where it considers that a relevant person committed a breach in such a way as to avoid or reduce the risk that the breach would be discovered, or that the difficulty of detection (whether actual or perceived) may have affected the behaviour in question.

(7) *Conduct following the breach.* The Authority may take the following factors into account:

- (a) the conduct of the relevant person in bringing (or failing to bring) quickly, effectively and completely the breach to the Authority's attention;
- (b) the degree of co-operation the relevant person showed during the investigation of the breach by the Authority, or any other regulatory authority and where a relevant person has fully co-operated with the Authority's investigation, this will be a factor tending to reduce the level of financial penalty;
- (c) any remedial steps taken since the breach was identified, including whether these were taken on the relevant person's own initiative or that of the Authority or another regulatory authority;

- (d) whether the relevant person concerned has complied with any recommendations made by the Authority relating to the breach.

(9) *Enforcement record and compliance history.* The Authority may take the previous disciplinary record and general compliance history of the relevant person into account.

This will include:

- (a) whether the Authority has taken any previous enforcement action against the relevant person;
- (b) whether the relevant person has previously undertaken not to do a particular act or engage in particular behaviour;
- (c) whether the Authority has previously requested a relevant person to take remedial action and the extent to which that action has been taken.
- (d) the general compliance history of the relevant person, including whether the Authority has previously brought to the relevant person's attention, issues similar or related to the conduct that constitutes the breach in respect of which the financial penalty is imposed. A relevant person's enforcement record could lead to the Authority imposing a higher penalty, for example where the relevant person has committed similar breaches in the past. In assessing the relevance of a relevant person's enforcement record and compliance history, the age of a particular matter will be taken into account, although a long-standing matter may still be relevant.

(10) *Other action taken by the Authority.* Action that the Authority has taken in relation to similar breaches by other relevant persons may be taken into account. This includes previous actions in which the Authority and a relevant person on whom a penalty is to be imposed have reached agreement as to the amount of the penalty. As stated the Authority

does not operate a tariff system. However, the Authority will seek to apply a consistent approach to determining the appropriate level of financial penalty.

(11) *Action taken by other regulatory authorities.* Considerations could include, for example:

- (a) action taken or to be taken against a relevant person by other regulatory authorities which may be relevant where that action relates to the breach in question;
- (b) the degree to which any remedial steps, required by other regulatory authorities, have been taken (and whether taken promptly).

(12) *Bermuda Monetary Authority guidance and other published materials:*

- (a) A relevant person does not commit a breach by not following the Authority's guidance. However, where a breach has otherwise been established, the fact that guidance had raised relevant concerns may inform the seriousness with which the breach is to be regarded by the Authority when determining the level of penalty.
- (b) The Authority will consider the nature of the guidance when deciding whether it is relevant to the level of penalty and, if it is, what weight to give it in relation to other relevant factors.

As to the relationship between prudential enforcement measures and enforcement measures under this Bill, where a breach of the Regulations does not in the opinion of the Authority give rise to prudential concerns, the Authority would exercise its powers under this Bill to impose a fine, without taking any further action under its prudential powers in the regulatory acts. But where a breach of the Regulations does give rise to prudential concerns, the Authority could take action under both the regulatory acts and this Bill. This would be the case for example where the Authority concludes that there has been a

failure in the AML/CFT systems and controls, and that such failure has brought into question the fitness and propriety of the senior manager concerned. In these circumstances the Authority could both fine the institution for breaches of the Regulations under this Bill, and take regulatory action by seeking the removal of the senior manager under the regulatory acts.

The Authority does not have any criminal jurisdiction. It is therefore not able to use its enforcement powers to investigate any criminal matters. Breaches of the Regulations however could attract both civil and criminal proceedings. It is the expectation of the Authority that the normal enforcement action for breaches of the Regulations would be by way of civil proceedings, and not by way of criminal proceedings. The determining factor would be whether breaches of the Regulations are associated with any other criminal conduct, such as fraud, money laundering or terrorist financing. Where the Authority forms such a view, it would not conduct any investigation of the matter under its powers but would file a complaint with the law enforcement authorities setting out its suspicions. The law enforcement authorities would then use their enforcement powers to conduct an investigation into the matter and bring a criminal prosecution for any criminal offences uncovered by them.

Multi jurisdiction – enforcement action

Some types of breach may potentially result not only in action by the Authority, but also action by other overseas regulatory authorities or enforcement agencies. The Authority, when deciding how to proceed in such cases, will look at the circumstances of the case and consider, in the light of the regulatory action being taken, whether it is appropriate for it or the overseas regulatory authority to take action to address the breach. The Authority will have regard to all the circumstances of the case including whether the overseas regulatory authority has adequate powers to address the breach in question or whether it would be appropriate for the Authority to take its own action.

In some cases, it may be appropriate for both the Authority and an overseas regulatory authority to be involved, and for both to take action in a particular case arising from the same facts. For example, a breach of the Regulations so serious as to justify the Authority cancelling the registration of an exempted entity or revoking the license of a licensed entity. In such cases, the Authority will work with the overseas regulatory authority to ensure that cases are dealt with efficiently and fairly, under operating arrangements in place (if any) between the Authority and the relevant authority. However in the event that there is a conflict between the law of the overseas regulator and the law of Bermuda, the law of the overseas regulator would always prevail.

Exercise of powers to obtain information, right of entry and entry to premises under warrant

Supervision involves the receipt and analysis of a variety of regular and ad hoc financial and other information from financial institutions. The Authority's standard reporting arrangements are kept under review, agreed with financial institutions from time to time and amended in the light of developments. Such reports and information are routinely provided by financial institutions on an entirely voluntary basis.

Certain matters are, however, the subject of specific statutory requirements. Clause 16 of the 2008 Bill provides formal powers for the Authority by notice in writing to require from a relevant person such information as it may reasonably require for the performance of its functions under the 2008 Bill, to produce documents and to attend before the Authority to answer questions.

Formal use of the power requiring relevant persons to provide the Authority with such information, produce documents or attend to answer questions, is infrequent since the Authority is able generally to rely on the willingness of relevant persons to provide information voluntarily. In particular circumstances, however, the Authority must consider whether to make use of this power – notably, for example, where it has material concerns about the accuracy or completeness of information provided by a financial institution.

Clause 17 of the 2008 Bill provides the Authority with specific powers to enter the business premises of such persons for the purpose of obtaining relevant information or documents. Use of these powers is exceptional, and generally reflects circumstances in which the Authority has serious concerns about the operations of a financial institution.

Under clause 18 of the 2008 Bill, the Authority has the power to apply to a Magistrate for a warrant to enter premises where documents or information is held. The circumstances under which the Authority may apply for a search warrant are those where the Authority has serious doubts about the willingness of the financial institution to comply with a request for information or the production of documents; or where the Authority believes that if such a requests were made that information or documentation would be destroyed.

PROPOSED FRAMEWORK - INTERNAL ENFORCEMENT PROCESSES:

