



BERMUDA

PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND ANTI-TERRORIST
FINANCING SUPERVISION AND ENFORCEMENT) ACT 2008

2008 : 49

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SCHEDULE 2

Regulated non-financial businesses and professions

WHEREAS it is expedient to make provision for the purpose of requiring supervisory authorities to monitor certain persons and take measures to secure 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 Bermuda Monetary Authority to discharge effectively its functions as supervisory authority for certain financial institutions, including power to impose civil penalties; to establish an appeal tribunal; to correct errors in the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, 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:

PROCEEDS OF CRIME (ANTI-MONEY LAUNDERING AND ANTI-TERRORIST
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PART I
PRELIMINARY

Short title

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

[Section 1 amended by 2010 : 50 s. 2 effective 25 August 2010]

Interpretation

2 (1) In this Act, unless the context otherwise requires,—

“AML/ATF regulated financial institution” means a person who—

- (a) carries on deposit-taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999;
- (b) carries on investment business within the meaning of section 3 of the Investment Business Act 2003;
- (c) is an insurer (and not a reinsurer) registered under section 4 of the Insurance Act 1978 who carries on long term business falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (d) is an insurance manager or broker registered under section 10 of the Insurance Act 1978 in so far as he acts as a manager or broker in connection with long term business (other than reinsurance business) falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (e) carries on the business of a fund administrator within the meaning of section 2(2) of the Investment Funds Act 2006;
- (f) carries on money service business within the meaning of section 20AA of the Bermuda Monetary Authority Act 1969;
- (g) carries on trust business within the meaning of section 9(3) of the Trusts (Regulation of Trust Business) Act 2001 and is not otherwise exempted by or under paragraph 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002; or
- (h) is the operator of an investment fund within the meaning of section 2 of the Investment Funds Act 2006;

“AML/ATF Regulations” means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, and any subsequent regulations made under section 49(3) of the Proceeds of Crime Act 1997 or section 12A of the Anti-Terrorism (Financial and other Measures) Act 2004;

“appeal tribunal” means the tribunal established under section 25;

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“BMA” means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

“competent authority” means the BMA or the FIA;

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

“direction” means a direction issued by the Minister by order under section 49A of the Proceeds of Crime Act 1997 or section 12B of the Anti-Terrorism (Financial and Other Measures) Act 2004;

“FIA” means the Financial Intelligence Agency established by section 3 of the Financial Intelligence Agency Act 2007;

“firm” means a professional company, association or partnership of—

- (a) barristers in independent practice and the employees, servants and agents of such company, association or partnership of barristers, including a barrister in independent practice operating as a sole proprietor and his employees, servants and agents; or
- (b) accountants in independent practice who are members of the Institute of Chartered Accountants of Bermuda and the employees, servants and agents of such company, association or partnership of accountants, including an accountant in independent practice who is a member of the Institute of Chartered Accountants of Bermuda operating as a sole proprietor and his employees, servants and agents;

“insurer” means a person, other than an insurer referred to in paragraph (c) of the definition “AML/ATF regulated financial institution”, that is carrying on insurance business in Bermuda, as defined in section 1 of the Insurance Act 1978;

“license condition” means the condition attached to a license issued by the Minister under section 49I of the Proceeds of Crime Act 1997 or section 12K of the Anti-Terrorism (Financial and Other Measures) Act 2004;

“licensed AML/ATF regulated financial institution” means an AML/ATF regulated financial institution that is for the time being licensed under any of the regulatory Acts;

“Minister” means the minister responsible for justice;

“non-licensed AML/ATF regulated financial institution” means an AML/ATF regulated financial institution which is not a licensed AML/ATF regulated financial institution;

“officer”, except in sections 16(9) and 19(3), means —

- (a) a duly authorised officer of a competent authority, and includes a member of its staff and an agent of a competent authority; or

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(b) the supervisor or other member of the staff of a designated professional body;

“professional body” means any body which regulates any trade, profession, business or description of employment or which carries out the duties in section 5 in relation to that trade, profession, business or description of employment;

“regulated non-financial business or profession” means a non-financial business or profession specified in Schedule 2;

“regulated professional firm” means a firm that, by way of business, provides legal or accountancy services to other persons when participating in financial or real property transactions concerning specified activities, and for the purposes of this definition, a firm participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction;

“regulatory Acts” means—

- (a) Insurance Act 1978;
- (b) Credit Unions Act 2010;
- (c) Banks and Deposit Companies Act 1999;
- (d) Trusts (Regulation of Trust Business) Act 2001;
- (e) Investment Business Act 2003;
- (f) Investment Funds Act 2006; and
- (g) Money Service Business Regulations 2007;

“relevant person” means a person to whom the AML/ATF Regulations or a direction or license condition applies;

“specified activities” means activities specified in section 49(5) of the Proceeds of Crime Act 1997.

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

(2) The Minister may, after consulting the National Anti-Money Laundering Committee, by order amend the definition of AML/ATF regulated financial institution.

[Section 2 subsection (1) amended by 2009 : 50 s. 10 effective 15 January 2010; subsection (1) amended by 2010 : 50 s. 3 effective 25 August 2010; subsection (1) amended by 2010 : 43 s. 47 effective 1 January 2011]

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PART 2
SUPERVISION

Supervisory authorities

3 (1) The following bodies are supervisory authorities for the purposes of this Act—

- (a) the BMA for AML/ATF regulated financial institutions and insurers that carry on business in or from Bermuda;
- (b) a designated professional body for the relevant persons regulated by it; and
- (c) the FIA for a regulated non-financial business or profession;

(2) Where there is more than one supervisory authority for a regulated person or entity, the supervisory authorities may agree that one of them will act as the supervisory authority for that person or entity.

(3) Where an agreement has been made under subsection (2), the authority which has agreed to act as the supervisory authority must notify the regulated person or entity or publish the agreement in such manner as it considers appropriate.

(4) Where no agreement has been made under subsection (2), the supervisory authorities for a regulated person or entity must cooperate in the performance of their functions under the Act.

(5) Where individual persons or entities within a group structure are subject to supervision under this Act by different supervisory authorities, the supervisory authorities may cooperate with each other in the performance of their functions under the Act and shall at least consider any directives or recommendations of other authorities, made in relation to other persons or entities in the group, in carrying out their supervisory responsibilities.

[Section 3(a) amended by 2009 : 50 s. 11 effective 15 January 2010; Section 3 amended by 2010 : 50 s. 4 effective 25 August 2010]

Amendment of Schedule 2

3A The Minister may, by Order subject to the affirmative resolution procedure, amend Schedule 2 by—

- (a) adding or deleting, in column 1 of the Schedule, a non-financial business or profession or class of non-financial business or profession; and
- (b) stating, in column 2 of the Schedule, whether the fit and proper test in section 11A must be met in respect of the regulated non-financial business or profession or class of non-financial business or profession designated in column 1.

[Section 3A inserted by 2010 : 50 s. 5 effective 25 August 2010]

Designated professional bodies

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

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

[Section 4 amended by 2010 : 50 s. 6 effective 25 August 2010]

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 the AML/ATF Regulations and, in the case of the BMA, with AML/ ATF Regulations, directions or license conditions.

(2) A supervisory authority must issue from time to time guidance as to compliance with—

- (a) the AML/ATF Regulations;
- (b) Part V of the Proceeds of Crime Act 1997;
- (c) paragraph 1 of Schedule 1 to the Anti-Terrorism (Financial and Other Measures) Act 2004; and
- (d) in the case of the BMA, the above provisions and directions.

(3) A supervisory authority must, as soon as practicable after the end of each of its financial years,—

- (a) make a report on its activities under this Act in that year to the Minister; and
- (b) publish the report in such manner as it thinks appropriate.

(4) A supervisory authority which, in the course of carrying out any of its functions, knows or suspects that a person is engaging, or has engaged, in money laundering or terrorist financing must as soon as practicable inform the Financial Intelligence Agency.

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

[Section 5 subsection (1) amended by 2009 : 50 s. 12 effective 15 January 2010; Section 5 subsection (2) amended by 2009 : 50 s. 12 effective 15 January 2010]

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PART 3

SUPERVISION BY COMPETENT AUTHORITIES

CHAPTER 1

FUNCTIONS OF COMPETENT AUTHORITIES

Functions of BMA

6 (1) The BMA has the functions conferred on it by section 5 in relation to AML/ATF regulated financial institutions and insurers.

(2) For the avoidance of doubt, nothing in this Act precludes the BMA from exercising its supervisory powers under the Bermuda Monetary Authority Act 1969 and the regulatory Acts over AML/ATF regulated financial institutions which are licensed under the regulatory Acts in relation to a failure to comply with the AML/ATF Regulations or with a direction or license condition.

[Section 6 amended by 2009 : 50 s. 13 effective 15 January 2010; subsection (2) amended by 2010 : 50 s. 9 effective 25 August 2010]

Functions of FIA

6A The FIA has the functions conferred on it by section 5 in relation to regulated non-financial businesses or professions.

[Section 6A inserted by 2010 : 50 s. 10 effective 25 August 2010]

Statement of principles

7 (1) A competent authority must, 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 person under section 12;
- (b) in exercising its powers in relation to persons or entities over which it has supervisory duties under section 6 or 6A to obtain information, to require the attendance of persons and to require production of documents under sections 16 to 18;
- (c) in exercising its powers—
 - (i) to impose penalties under section 20 against persons or entities over which it has supervisory duties under section 6 or 6A; and
 - (ii) to publish decisions to do so under section 21; and
- (d) in applying any amounts paid to it by way of penalties under Chapter 4 in accordance with the duty in section 24(3).

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

[Section 7 subsection (1) amended by 2009 : 50 s. 14 effective 15 January 2010; subsection (1) amended by 2010 : 50 s. 8 effective 25 August 2010; Section 7 amended by 2010 : 50 s. 11 effective 25 August 2010]

Duty to maintain register

8 (1) For the purpose of discharging its duties under section 5, a competent authority must establish and maintain in such form as it may determine a register of the persons and entities over which it has supervisory duties under section 6 or 6A, comprising—

- (a) in the case of the BMA—
 - (i) all licensed AML/ATF regulated financial institutions;
 - (ii) all insurers;
 - (iii) all non-licensed AML/ATF regulated financial institutions which are currently registered under Chapter 2; and
- (b) in the case of the FIA, all regulated non-financial businesses or professions.

(2) A competent authority must, from time to time, publish the register in such manner as it considers appropriate.

[Section 8 subsection (1) amended by 2009 : 50 s. 15 effective 15 January 2010; subsection (2) amended by 2010 : 50 s. 8 effective 25 August 2010; subsection (1) amended by 2010 : 50 s. 12 effective 25 August 2010]

Chapter 2

Registration of Non-licensed AML/ATF Regulated Financial Institutions and
Regulated Non-financial Businesses or Professions

Requirement for Registration

9 (1) No non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession shall carry on business unless the person or entity has applied to the competent authority that has supervisory duties over it and has been included in the register.

(2) Notwithstanding subsection (1) a regulated non-financial business or profession may carry on business without being registered as required by that subsection for a period of 6 months from the day that it is added to Schedule 2 by an Order of the Minister issued under section 3A.

[Section 9 repealed and replaced by 2010 : 50 s. 14 effective 25 August 2010]

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Application for registration

10 (1) An application to a competent authority for registration must be made in accordance with this section.

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

(3) The information which a competent authority may specify shall include—

- (a) the applicant's name and (if different) the name of the business;
- (b) the applicant's address;
- (c) the nature of the business;
- (d) the name of the reporting officer, if any, appointed for the purposes of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008; and
- (e) in the case of a person or entity designated in Schedule 2 as subject to the fit and proper test, information as to whether persons associated with the person or entity are fit and proper persons under section 11A.

(4) At any time after receiving an application and before determining it, a competent authority may require the applicant to provide, within 28 days beginning with the date of being requested to do so, such further information as it reasonably considers necessary to enable it to determine the application.

(5) If at any time after the applicant has provided the competent 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 competent 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 competent 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 a competent authority under this section shall be in such form or verified in such manner as it may specify.

[Section 10 amended by 2010 : 50 s. 8 effective 25 August 2010; subsection (3) amended by 2010 : 50 s. 15 effective 25 August 2010]

Determination of application

11 (1) A competent authority may refuse to register an applicant only if—

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- (a) any requirement of, or imposed under, section 10 has not been complied with;
- (b) it appears to the competent authority that any information provided pursuant to section 10 is false or misleading in a material particular;
- (c) the applicant has failed to pay the application fee imposed under section 14; or
- (d) in the case of an applicant designated in Schedule 2 as subject to the fit and proper test, a person associated with the applicant is not a fit and proper person under section 11A.

(2) A competent authority must, within three months 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 10(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 to the appeal tribunal.

(3) A competent authority must include the applicant in the register as soon as practicable after notifying him of its decision to do so.

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

[Section 11 amended by 2010 : 50 s. 8 effective 25 August 2010; amended by 2010 : 50 s. 16 effective 25 August 2010]

Fit and proper test

11A (1) The following persons associated with a regulated non-financial business or profession, that is designated in Schedule 2 as subject to the fit and proper test, must be fit and proper persons—

- (a) a person who effectively directs or controls the business of the applicant, including a director, controller or senior executive; and
- (b) a person carrying out, in relation to the business or profession, the functions of a reporting officer described in regulation 17 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he

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is fulfilling or likely to fulfil those responsibilities and to whether the interests of the regulated non-financial business or profession are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the FIA to be designed for protecting members of the public against financial loss due to—
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of services by the non-financial business or profession or the management of companies; or
 - (ii) the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices appearing to the FIA to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business; and
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

[Section 11A inserted by 2010 : 50 s. 17 effective 25 August 2010]

Meaning of “director”, “controller” and “senior executive”

11B (1) In section 11A, “director”, “controller” and “senior executive” shall be construed in accordance with the provisions of this section.

(2) “Director” in relation to a regulated non-financial business or profession, includes any person who occupies the position of director, by whatever name called.

(3) “Controller” in relation to a regulated non-financial business or profession, means—

- (a) in the case of a regulated non-financial business or profession which is a company, a managing director of the company, or of its parent entity;
- (b) in the case of a regulated non-financial business or profession which is a firm—
 - (i) if a partnership, the managing partner; or
 - (ii) if an unincorporated association, a member of the firm;
- (c) in the case of a regulated non-financial business or profession which is neither a company nor a firm, a sole proprietor;

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- (d) a chief executive of the regulated non-financial business or profession or of its parent entity; and
 - (e) a person who—
 - (i) holds ten percent or more of the shares in a regulated non-financial business or profession which is a company, or in its parent entity;
 - (ii) is entitled to exercise or control the exercise of ten percent or more of the voting power in the regulated non-financial business or profession or in the parent entity; or
 - (iii) is able to exercise a significant influence over the management of the regulated non-financial business or profession or the parent entity by virtue of the voting power in the regulated non-financial business or profession or the parent entity"; and
 - (f) a person in accordance with whose directions or instructions the following persons are accustomed to act—
 - (i) the directors of the regulated non-financial business or profession;
 - (ii) the directors of the parent entity of the regulated non-financial business or profession; and
 - (iii) persons who are controllers by virtue of paragraph (e).
- (4) "Senior executive", in relation to a regulated non-financial business or profession, means a person who, under the immediate authority of a director or chief executive of the regulated non-financial business or profession—
- (a) exercises managerial functions; or
 - (b) is responsible for maintaining accounts or other records of the regulated non-financial business or profession.

[Section 11B inserted by 2010 : 50 s. 17 effective 25 August 2010]

Cancellation of registration

12 A competent authority may cancel the registration of a non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession registered by the authority under section 11 if—

- (a) at any time after registration, it appears to the competent authority that it would have had grounds to refuse registration under section 11(1)(b) or (d);
- (b) the person or entity is in breach of a material provision of the AML/ATF regulations;
- (c) the person or entity has failed to comply with any obligation imposed by or under this Act; or

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- (d) the competent authority is satisfied that the person or entity has ceased to carry on business.

[Section 12 amended by 2010 : 50 s. 18 effective 25 August 2010]

Procedure for cancelling registration

13 (1) Subject to subsection (4), where a competent authority proposes to cancel the registration of a non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession it must give notice to the registered person or entity (a “warning notice”) indicating—

- (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 within a specified period (which must not be less than 28 days).

(2) After considering any representations made by the registered person or entity, a competent authority must decide within three months of the end of the period specified in subsection (1)(c) whether to cancel the registered person's or entity's registration.

(3) The competent authority must give the registered person or entity notice (a “decision notice”)—

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

(4) Subsections (1) to (3) and section 15 do not apply if the cancellation is under section 12(d) and either—

- (a) the registered person or entity confirms, in such manner as the competent authority may determine, that it—
 - (i) has ceased to carry on business; and
 - (ii) has no objection to the cancellation; or
- (b) the registered person or entity is a company which has been struck off the register of companies by the Registrar of Companies under section 261 of the Companies Act 1981 (Registrar may strike defunct company off register).

[Section 13 amended by 2010 : 50 s. 8 effective 25 August 2010; amended by 2010 : 50 s. 19 effective 25 August 2010]

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Power to issue directives

13A (1) The FIA may issue a directive to any regulated non-financial business or profession if —

- (a) it fails to comply with a requirement of the AML/ATF Regulations; or
- (b) the fit and proper test applies in respect of the business or profession by virtue of section 11A, and the test is not met.

(2) A directive under this section may be of unlimited duration or of a duration specified in the notice of the directive.

(3) A notice of a directive under this section shall—

- (a) specify the reasons for the giving of the directive;
- (b) specify when the directive is to have effect;
- (c) give particulars of the provisions of subsections (4) and (5); and
- (d) give particulars of the rights of appeal conferred by subsection (6).

(4) Any regulated non-financial business or profession to which a directive is issued under subsection (1) may apply to the FIA to have it withdrawn or varied and the FIA shall withdraw or vary the directive in whole or in part if it considers that there are no longer any grounds under subsection (1) which justify the directive or part of the directive concerned.

(5) If the FIA refuses an application under subsection (4), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.

(6) A regulated non-financial business or profession aggrieved by a directive issued under subsection (1), or a refusal to grant an application under subsection (5), or the granting of such an application only in part may, within one month after the day on which notice was served of the directive, refusal or grant, appeal to the appeal tribunal.

[Section 13A inserted by 2010 : 50 s. 20 effective 25 August 2010]

Fees

14 (1) An application for registration under section 10 must be accompanied by the application fee.

(2) An applicant for registration must pay to the competent authority to which it applies an annual fee—

- (a) on registration; and
- (b) on or before 30 April in every year following the year of registration.

(3) The first annual fee payable on registration under subsection (2)(a) shall be a proportion of the annual 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.

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(4) The application fee and annual fee shall be—

- (a) in relation to non-licensed AML/ATF regulated financial institutions, of such amounts as may be prescribed under section 20B of, and the Fourth Schedule to, the Bermuda Monetary Authority Act 1969; and
- (b) in relation to regulated non-financial businesses or professions, of such amounts as may be prescribed under section 16A of the Financial Intelligence Agency Act 2007.

(5) A competent authority may recover any fee payable under this Act as a debt owing to it in any court of competent jurisdiction.

[Section 14 subsection (5) amended by 2010 : 50 s. 8 effective 25 August 2010; Section 14 amended by 2010 : 50 s. 21 effective 25 August 2010]

Appeals: registration

15 (1) A person or entity may appeal a decision by a competent authority—

- (a) not to register an applicant in the register maintained under section 8;
- (b) to cancel the registration of a non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession under section 12.

(2) An appeal from a decision by a competent authority shall lie to the appeal tribunal.

(3) A decision to cancel the registration of a non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession 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.

[Section 15 amended by 2010 : 50 s. 8 effective 25 August 2010; amended by 2010 : 50 s. 22 effective 25 August 2010]

Chapter 3

Powers of Competent Authorities

Power to require information and documents

16 (1) An officer of a competent authority may, by notice in writing to a person or entity over which the competent authority has supervisory duties under section 6 or 6A or to a person connected with that person or entity, require the person or entity or 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

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- (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 person or entity if he is, or has at any time been, in relation to the person or entity, 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 competent 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 or entity shall not be required under this section to provide or produce information or to answer questions which the person or entity 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.
- (8) Section 41E of the Proceeds of Crime Act 1997 (statements made in response to customer information orders may not be used in criminal proceedings except in certain circumstances) applies with appropriate modifications to statements made by a person or entity 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 person is a body corporate, a person who is—
 - (i) an officer or manager of the body corporate or of a holding company of the body corporate;
 - (ii) an employee of the body corporate;
 - (iii) an agent of the body corporate or of a holding company of the body corporate;

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- (b) if the entity is a partnership, a person who is a member, manager, employee or agent of the partnership;
- (c) if the entity is an unincorporated association of persons which is not a partnership, a person who is an officer, manager, employee or agent of the unincorporated association.
- (d) if the person is an individual, a person who is an employee or agent of that individual.

(10) In subsection (9)—

“holding company” has the meaning given in section 86 of the Companies Act 1981;

“officer” includes a director, secretary or senior executive of the body corporate partnership or unincorporated body, regardless of job title.

[Section 16 amended by 2009 : 50 s. 16 effective 15 January 2010; amended by 2010 : 50 s. 8 effective 25 August 2010; amended by 2010 : 50 s. 24 effective 25 August 2010]

Site visits

17 (1) Subsection (2) applies where an officer has reasonable cause to believe that any premises is being used in connection with the business of a person or entity that is supervised under section 6 or 6A by the competent authority by which that officer is employed.

(2) The officer may at any reasonable time, on producing evidence of his authority,—

- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business;
- (d) inspect any recorded information found on the premises and take copies of, or make extracts from, any such information;
- (e) require any person on the premises to provide an explanation of any recorded information or to state where it may be found.

(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 competent authority of its functions under this Act.

[Section 17 subsection (1) amended by 2009 : 50 s. 17 effective 15 January 2010; subsection (3) amended by 2010 : 50 s. 8 effective 25 August 2010; subsection (1) amended by 2010 : 50 s. 25 effective 25 August 2010]

Entry to premises under warrant

18 (1) A magistrate may issue a warrant under this subsection if satisfied on information on oath given by an officer that there are reasonable grounds for believing that condition A, B or C is satisfied.

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- (2) Condition A 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) Condition B is—
- (a) that a person on whom a requirement has been imposed under section 16(1)(b) has failed to comply with it (whether wholly or in part); and
 - (b) that there is on the premises specified in the warrant recorded information which has been required to be produced.
- (4) Condition C is—
- (a) that an officer has been obstructed in the exercise of a power under section 17(2); and
 - (b) that there is on the premises specified in the warrant recorded information which could be inspected under section 17(2)(d).
- (5) A magistrate may issue a warrant under this subsection 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 person or entity that is supervised under section 6 or 6A by the competent authority by which the officer is employed; and
 - (b) there is on the premises specified in the warrant recorded information relevant to whether that offence has been, is being, or is about to be, committed.
- (6) A warrant issued under subsection (1) or (5) shall authorise any police officer not below the rank of inspector together with one or more officers of the competent authority and such other persons as the circumstances may require—
- (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;

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- (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.

[Section 18 subsection (5)(a) amended by 2009 : 50 s. 18 effective 15 January 2010; subsection (6) amended by 2010 : 50 s. 8 effective 25 August 2010; subsection (5)(a) amended by 2010 : 50 s. 26 effective 25 August 2010]

Failure to comply with information requirement

19 (1) If, on an application made by a competent authority it appears to the Supreme Court that a person or entity (the “information defaulter”) has failed to do something that the person or entity 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 unincorporated body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.

(4) In subsection (3), “officer” includes a director, secretary or senior executive of the body corporate, partnership or unincorporated body, regardless of job title.

[Section 19 subsection (1) amended by 2010 : 50 s. 8 effective 25 August 2010; subsection (1) amended by 2010 : 50 s. 27 effective 25 August 2010]

CHAPTER 4
CIVIL PENALTIES

Power to impose civil penalties

20 (1) A competent authority may impose a penalty —

- (a) on an AML/ATF regulated financial institution or a regulated non-financial business or profession supervised by it which fails to comply with any requirement of the AML/ATF Regulations specified in subsection (3); or
- (b) on an AML/ATF regulated financial institution or insurer, or on a regulated non-financial business or profession supervised by it, which fails to comply with a direction, directive or license condition.

(1A) The maximum amount of the civil penalty that may be imposed under subsection (1) is—

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- (a) in the case of a person or entity supervised by the BMA, such amount not exceeding \$500,000 as the BMA considers appropriate; and
- (b) in the case of a person or entity supervised by the FIA, such amount not exceeding \$250,000 as the FIA considers appropriate.

(2) For the purposes of subsection (1A), “appropriate” means effective, proportionate and dissuasive.

(3) The following provisions of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are specified for the purposes of subsection (1)—

- (a) in relation to AML/ ATF regulated financial institutions—
 - regulation 6(1), (2) and (3) (customer due diligence measures);
 - regulation 7(1) and (3) (ongoing monitoring);
 - regulation 8(2) (timing of verification);
 - regulation 9(1)(a), (b) and (c) (requirement to cease transactions etc);
 - regulation 11(1) (enhanced customer due diligence);
 - regulation 12(1) and (2) (branches and subsidiaries);
 - regulation 13(1), (2), (3) and (4) (shell banks, anonymous accounts etc);
 - regulation 15(1), (4), (5), (6) and (7) (record-keeping);
 - regulation 16(1), (3) and (4) (systems);
 - regulation 17(1) (internal reporting procedures);
 - regulation 18(1) (training etc);
 - regulation 23(1) (read with regulations 24(1) and (2) and 25, as the case requires) (payer information to accompany wire transfer);
 - regulation 23(2) (read with regulations 23(3) or 23(4), as the case requires) (wire transfers: verification of payer information);
 - regulation 23(5) (wire transfers: record keeping);
 - regulation 24(2) (wire transfers: payer information);
 - regulation 26(1) (read with regulation 26(2)) (wire transfers: detection of missing or incomplete payer information);
 - regulation 27(1) (read with regulation 27(2)) (wire transfer with missing or incomplete payer information);
 - regulation 27(3) (wire transfers: reports of failure to supply information to BMA);
 - regulation 29 (wire transfers: record keeping);
 - regulation 30 (wire transfers: intermediary to keep payer information with transfer);

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regulation 31(3) (wire transfers: receipt of transfer with missing or incomplete information);

regulation 31(4) (wire transfers: provision of further payer information on request);

regulation 31(5) (wire transfers: record keeping by intermediary).

(b) in relation to regulated non-financial businesses or professions—

regulation 6(1), (2) and (3) (customer due diligence measures);

regulation 7(1) and (3) (ongoing monitoring);

regulation 8(2) (timing of verification);

regulation 9(1)(a), (b) and (c) (requirement to cease transactions etc);

regulation 11(1) (enhanced customer due diligence);

regulation 15(1), (4), (5), (6) and (7) (record-keeping);

regulation 16(1), (3) and (4) (systems);

regulation 17(1) (internal reporting procedures);

regulation 18(1) (training etc).

(4) The Minister may by order amend subsection (3) to add to, or remove from, the list any provisions of the AML/ATF regulations.

(5) A competent authority must not impose a penalty where there are reasonable grounds for it to be satisfied that the person or entity over which it has supervisory duties under section 6 or 6A took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(6) In deciding whether a person or entity over which it has supervisory duties under section 6 or 6A has failed to comply with a requirement of the regulations, a direction or a license condition, the competent authority must consider whether the person or entity followed any relevant guidance which was at the time—

(a) issued by the competent authority;

(b) approved by the Minister; and

(c) published in the Gazette.

(7) In this Chapter, “penalty” means a penalty imposed under subsection (1).

[Section 20 subsection (3) amended by BR 1 / 2010 s. 2 effective 13 January 2010; Section 20 amended by 2009 : 50 s. 19 effective 15 January 2010; Section 20 subsections (1), (5) and (6) amended by 2010 : 50 s. 8 effective 25 August 2010; Section 20 amended by 2010 : 50 s. 28 effective 25 August 2010]

Power to publish decision to impose penalty

21 (1) A competent authority may publish a decision to impose a penalty on an AML/ATF regulated financial institution or a regulated non-financial business or profession in such manner as it considers appropriate.

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(2) But the competent authority must not publish such a decision—

- (a) before notifying the person or entity in question; or
- (b) pending an appeal under section 23.

[Section 21 subsection (1) and (2) amended by 2010 : 50 s. 8 effective 25 August 2010; Section 21 amended by 2010 : 50 s. 29 effective 25 August 2010]

Procedure for imposing civil penalties

22 (1) Where a competent authority proposes to impose a penalty it must give the person or entity over which it has supervisory duties under section 6 or 6A notice (a “warning notice”) of—

- (a) its proposal to impose the penalty and the proposed amount;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations to a competent authority within a specified period (which may not be less than 28 days).

(2) After considering any representations made by the person or entity, the competent authority must decide, within three months from the end of the period specified in subsection (1)(c) whether to impose a penalty.

(3) A competent authority must give the person or entity notice (a “decision notice”) of—

- (a) its decision not to impose a penalty; or
- (b) its decision to impose a penalty and—
 - (i) the amount of the penalty;
 - (ii) the reasons for its decision; and
 - (iii) the right to appeal to the appeal tribunal.

[Section 22 amended by 2009 : 50 s. 20 effective 15 January 2010; amended by 2010 : 50 s. 8 effective 25 August 2010; amended by 2010 : 50 s. 30 effective 25 August 2010]

Appeals: penalties

23 (1) A person or entity may appeal a decision by a competent authority to impose a penalty.

(2) An appeal from a decision by a competent authority shall lie to the appeal tribunal.

(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.

[Section 23 amended by 2010 : 50 s. 8 effective 25 August 2010; amended by 2010 : 50 s. 31 effective 25 August 2010]

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Payment of penalties towards costs of competent authority

24 (1) A penalty is payable to the competent authority which is the supervisory authority over the person who pays the penalty.

(2) A competent authority may recover any penalty as a debt owing to it in any court of competent jurisdiction.

(3) A competent authority must apply amounts paid to it by way of penalties towards the costs of carrying out its functions of monitoring persons or entities over which it has supervisory duties under section 6 or 6A and securing their compliance with the AML/ATF Regulations, directions and license conditions.

(4) But when deciding—

- (a) whether to impose a penalty; and
- (b) the amount of any penalty,

the competent authority must not take account of the costs which it incurs, or expects to incur, in carrying out those functions.

(5) A competent authority's annual report under section 5(3) must—

- (a) state the total amount of any penalties paid to it; and
- (b) indicate how that amount was, or will be, applied in accordance with the duty imposed by subsection (3).

[Section 24 subsection (3) amended by 2009 : 50 s. 21 effective 15 January 2010; Section 24 amended by 2010 : 50 s. 8 effective 25 August 2010; amended by 2010 : 50 s. 32 effective 25 August 2010]

CHAPTER 5
APPEAL TRIBUNAL

Appeal tribunal

25 (1) There shall be an appeal tribunal for the purposes of this Part.

(2) Schedule 1 has effect as to the appointment of the appeal tribunal and other matters relating to the appeal tribunal.

[Section 25 amended by 2010 : 50 s. 34 effective 25 August 2010]

Powers of tribunal

26 The appeal tribunal has the power—

- (a) to quash or vary a decision of a competent authority not to register, or to cancel the registration of, a non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession;
- (aa) to quash or vary a directive issued by the FIA under section 13A(1);

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- (b) to quash or vary a decision of a competent authority to impose a penalty under section 20, including the power to reduce any penalty to such amount (including nil) as the tribunal think proper; and
- (c) to substitute their own decision for any decision quashed on appeal.

[Section 26 amended by 2010 : 50 s. 8 effective 25 August 2010; amended by 2010 : 50 s. 35 effective 25 August 2010]

Procedure and evidence

27 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 a competent 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 a competent 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;
- (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.

[Section 27 amended by 2010 : 50 s. 8 effective 25 August 2010]

Decisions of tribunal

28 (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

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

(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 of appeal

29 (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.

(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 a competent authority which is the subject of the appeal was unreasonable it may order the competent 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.

[Section 29 subsection (3) amended by 2010 : 50 s. 36 effective 25 August 2010]

Appeal to Supreme Court

30 (1) Any party, including a competent authority, may appeal to the Supreme Court on any question of law arising from the decision of the appeal tribunal.

(2) If the Supreme Court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for re-hearing and determination.

(3) No appeal to the Court of Appeal shall be brought from a decision of the Supreme Court on an appeal brought under this section, except with leave of the Court of Appeal.

[Section 30 subsection (1) amended by 2010 : 50 s. 8 effective 25 August 2010]

PART 4A

SUPERVISION BY DESIGNATED PROFESSIONAL BODIES

Functions of designated professional bodies

30A (1) A designated professional body has the functions, duties and powers, in relation to regulated professional firms, conferred on it by section 5 and this Part.

(2) The Minister may from time to time, by notice published in the Gazette, give to a designated professional body such general policy directives as appear to the Minister to be necessary in the public interest.

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(3) A designated professional body shall act in accordance with any policy directive issued by the Minister under subsection (2).

[Section 30A inserted by 2010 : 50 s. 37 effective 25 August 2010]

Duty to establish and maintain register

30B (1) A designated professional body shall establish and maintain, in such form as it may determine, a register of regulated professional firms.

(2) The designated professional body shall make the register available for public inspection in its offices at all reasonable times.

[Section 30B inserted by 2010 : 50 s. 37 effective 25 August 2010]

Registration of regulated professional firms

30C (1) Every regulated professional firm shall register with the designated professional body, in such manner and form as the body may specify, by providing their name, address and such information about the nature of their business and activities as the professional body may require.

(2) If at any time after registration there is a material change affecting any matter contained in the information provided under subsection (1) or if it becomes apparent that the information contains a significant inaccuracy, the regulated professional firm shall provide to the designated professional body, without delay, updated information respecting the change or a correction of the inaccuracy.

[Section 30C inserted by 2010 : 50 s. 37 effective 25 August 2010]

Power to require information and documents

30D (1) An officer of a designated professional body may, by notice in writing to a regulated professional firm or to a person connected with a regulated professional firm, require that professional firm or 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) An officer of a designated professional body may exercise powers under this section only if the information sought to be obtained is reasonably required in connection with the exercise by the designated professional body of its functions under this Act.

(3) Where an officer of a designated professional body 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; and
- (b) the information must be provided or produced—

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- (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.
- (4) The power to require information recorded otherwise than in legible form includes a power to require the production of a copy of the information in legible form or in a form from which it can readily be produced in visible and legible form.
- (5) The production of a document does not affect any lien which a person has on the document.
- (6) 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.
- (7) For the purposes of subsection (1), the following are connected persons—
- (a) if the regulated professional firm is a body corporate, a person who is—
 - (i) an officer or manager of the body corporate or of a holding company of the body corporate;
 - (ii) an employee of the body corporate; and
 - (iii) an agent of the body corporate or of a holding company of the body corporate;
 - (b) if the regulated professional firm is a partnership, a person who is a partner, manager, employee or agent of the partnership;
 - (c) if the regulated professional firm is a sole proprietor, a person who is an employee or agent of that sole proprietor; or
 - (d) if the regulated professional firm is an unincorporated association of person which is not a partnership, a person who is an officer, manager, employee or agent of the unincorporated association.

(8) In subsection (7)—

“holding company” has the meaning given in section 86 of the Companies Act 1981;

“officer” includes a director, secretary or senior executive of the body corporate, partnership or unincorporated body, regardless of job title.

[Section 30D inserted by 2010 : 50 s. 37 effective 25 August 2010]

Site visits

30E (1) Subsection (2) applies where an officer of a designated professional body has reasonable cause to believe that any premises are being used by a regulated professional firm in connection with their business.

(2) The officer may at any reasonable time, on producing evidence of his authority—

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- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business;
- (d) inspect any recorded information found on the premises and take copies of, or make extracts from, any such information;
- (e) require any person on the premises to provide an explanation of any recorded information or to state where it may be found.

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

(4) Subsection (2)(d) and subsection (2)(e) shall not apply to recorded information which a person would be entitled to refuse to disclose 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.

[Section 30E inserted by 2010 : 50 s. 37 effective 25 August 2010]

Entry to premises under ex parte order

30F (1) A judge of the Supreme Court may issue an ex parte order under this subsection if satisfied on information on oath given by an officer of a designated professional body that there are reasonable grounds for believing that condition A, B or C is satisfied.

(2) Condition A is—

- (a) that there is on the premises specified in the ex parte order recorded information in relation to which a requirement could be imposed under section 30D(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) Condition B is—

- (a) that a person on whom a requirement has been imposed under section 30D(1)(b) has failed to comply with it (whether wholly or in part); and
- (b) that there is on the premises specified in the ex parte order recorded information which has been required to be produced.

(4) Condition C is—

- (a) that an officer of the designated professional body has been obstructed in the exercise of a power under section 30E(2); and

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(b) that there is on the premises specified in the ex parte order recorded information which could be inspected under section 30E(2)(d).

(5) A judge of the Supreme Court may issue an ex parte order under this subsection if satisfied on information on oath given by an officer of a designated professional body 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 regulated professional firm; and

(b) there is on the premises specified in the ex parte order recorded information relevant to whether that offence has been, is being, or is about to be, committed.

(6) An ex parte order issued under subsection (1) or (5) shall authorise any police officer not below the rank of inspector together with one or more officers of a designated professional body and such other persons as the circumstances may require—

(a) to enter the premises specified in the ex parte order;

(b) to search the premises and take possession of any recorded information or anything appearing to be recorded information specified in the ex parte order 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 ex parte order;

(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 ex parte order or to state where it may be found; and

(e) to use such force as may reasonably be necessary.

[Section 30F inserted by 2010 : 50 s. 37 effective 25 August 2010]

Failure to comply with information requirement

30G (1) If, on an application made by a designated professional body, 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 30D(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; and

(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

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officer of the body corporate, partnership or unincorporated body who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.

(4) In subsection (3), “officer” includes a director, secretary or senior executive of the body corporate, partnership or unincorporated body, regardless of job title.

[Section 30G inserted by 2010 : 50 s. 37 effective 25 August 2010]

Power to issue directives

30H (1) A designated professional body may issue a directive to any regulated professional firm that fails to comply with a requirement of the AML/ATF Regulations in the provision of legal or accountancy services to other persons, when participating in financial or real property transactions concerning specified activities, requiring the firm, when carrying out any of those activities—

- (a) to carry out or not to carry out any transaction or other act concerning any specified activity, or to carry it out subject to restrictions imposed by the directive;
- (b) to prevent any person carrying on business on its behalf, from carrying out any function or employment or occupying any position concerning any specified activity; or
- (c) to cease participation in financial or real property transactions concerning any specified activity.

(2) A directive under this section may be of unlimited duration or of a duration specified in the notice of the directive.

(3) A notice of a directive under this section shall—

- (a) specify the reasons for the giving of the directive;
- (b) specify when the directive is to have effect;
- (c) give particulars of the provisions of subsections (4) and (5); and
- (d) give particulars of the rights of appeal conferred by subsection (6).

(4) Any regulated professional firm to whom a directive is given under subsection (1) may apply to the designated professional body that issued the directive to have it withdrawn or varied and that body shall withdraw or vary the directive in whole or in part if it considers that there are no longer any grounds under subsection (1) which justify the directive or part of the directive concerned.

(5) If the designated professional body refuses an application under subsection (4), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.

(6) Any regulated professional firm aggrieved by a directive given under subsection (1), or a refusal to grant an application under subsection (5), or the granting of such an

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application only in part may, within one month after the day on which notice was served of the directive, refusal or grant, appeal to the Supreme Court.

[Section 30H inserted by 2010 : 50 s. 37 effective 25 August 2010]

Power to impose civil penalties on regulated professional firms

30I (1) A designated professional body may impose a penalty of such amount not exceeding \$250,000 as it considers appropriate on a regulated professional firm that fails to comply with a directive issued under section 30H or with any requirement of the AML/ATF Regulations specified in subsection (3).

(2) For the purposes of subsection (1), “appropriate” means effective, proportionate and dissuasive.

(3) The following provisions of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are specified for the purposes of subsection (1)—

regulation 6(1), (2) and (3) (customer due diligence measures);

regulation 7(1) and (3) (ongoing monitoring);

regulation 8(2) (timing of verification);

regulation 9(1)(a), (b) and (c) (requirement to cease transactions etc);

regulation 11(1) (enhanced customer due diligence);

regulation 15(1), (4), (5), (6) and (7) (record-keeping);

regulation 16(1), (3) and (4) (systems);

regulation 17(1) (internal reporting procedures);

regulation 18(1) (training etc).

(4) The Minister may by order amend subsection (3) to add to, or remove from, the list any provisions of the AML/ATF Regulations.

(5) A designated professional body shall not impose a penalty where there are reasonable grounds for it to be satisfied that the regulated professional firm took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(6) In deciding whether a regulated professional firm has failed to comply with a requirement of the regulations, the designated professional body must consider whether the firm followed any relevant guidance which was at the time—

(a) issued by designated professional body;

(b) approved by the Minister; and

(c) published in the Gazette.

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(7) In this section and in sections 30J and 30K, “penalty” means a penalty imposed under subsection (1).

[Section 30I inserted by 2010 : 50 s. 37 effective 25 August 2010]

Procedure for imposing civil penalties

30J (1) Where a designated professional body proposes to impose a penalty it must give the regulated professional firm notice (a “warning notice”) of—

- (a) its proposal to impose the penalty and the proposed amount;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations to the designated professional body within a specified period (which may not be less than 28 days).

(2) After considering any representations made by the regulated professional firm, the designated professional body must decide, within three months from the end of the period specified in subsection (1)(c) whether to impose a penalty.

(3) The designated professional body must give the regulated professional firm notice (a “decision notice”) of—

- (a) its decision not to impose a penalty; or
- (b) its decision to impose a penalty and—
 - (i) the amount of the penalty;
 - (ii) the reasons for its decision; and
 - (iii) the right to appeal under section 30L.

[Section 30J inserted by 2010 : 50 s. 37 effective 25 August 2010]

Power to publish decision to impose penalty

30K (1) A designated professional body may publish a decision to impose a penalty on a regulated professional firm in such manner as it considers appropriate.

(2) A designated professional body must not publish a decision under subsection (1)—

- (a) before notifying the professional firm in question; or
- (b) pending an appeal under section 30L.

[Section 30K inserted by 2010 : 50 s. 37 effective 25 August 2010]

Appeals: penalties

30L (1) A person may appeal to the Supreme Court against a decision by a designated professional body to impose a penalty under this Part.

(2) 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

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

[Section 30L inserted by 2010 : 50 s. 37 effective 25 August 2010]

Payment of penalties towards costs of professional designated body

30M (1) A penalty is payable to a designated professional body to defray the costs of carrying out its functions under this Act.

- (2) But when deciding—

- (a) whether to impose a penalty; and
(b) the amount of any penalty,

a designated professional body must not take account of the costs which it incurs, or expects to incur, in carrying out those functions.

(3) A designated professional body may recover any penalty as a debt owing to it in any court of competent jurisdiction.

- (4) A designated professional body's annual report under section 5(3) must—

- (a) state the total amount of any penalties paid to it; and
(b) indicate how that amount was, or will be, applied in accordance with the duty imposed by subsection (3).

[Section 30M inserted by 2010 : 50 s. 37 effective 25 August 2010]

Immunity from suit

30N (1) No action, suit, prosecution or other proceeding shall be brought or instituted personally against any director, officer, servant or agent of a designated professional body, in respect of any act done bona fide in pursuance or execution or intended execution of their functions under this Act or any other Act and regulations made thereunder.

(2) Where any director or officer is exempt from liability by reason only of subsection (1), the designated professional body shall be liable to the extent that it would be if that director or officer were a servant or agent of the designated professional body.

(3) Neither the designated professional body, nor any director, officer, servant or agent of the body, is liable in damages for anything done or omitted to be done in the discharge or purported discharge of the designated professional body's functions under this Act or any other Act and regulations made thereunder, unless it is shown that the person acted, or omitted to act, in bad faith.

(4) For the purposes of this section, "agent" includes an auditor, accountant or other person who by or under any statutory provision is under a duty to give notice of, or report on, any fact or matter to the designated professional body for the purposes of its functions.

[Section 30N inserted by 2010 : 50 s. 37 effective 25 August 2010]

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PART 5
SUPPLEMENTARY

Restricted information

Restricted information

31 (1) Except as provided by section 32—

- (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 mentioned in paragraph (a),

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

(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.

Permitted disclosure

32 (1) Section 31 does not preclude the disclosure of information if the disclosure is for the purpose of enabling or assisting—

- (a) the BMA to discharge its functions under this Act or any other statutory provision;
- (b) the Financial Intelligence Agency to discharge its functions under any statutory provision;
- (ba) the Bermuda Bar Council, the Institute of Chartered Accountants of Bermuda or other professional body to discharge its statutory responsibility for maintenance of professional and ethical standards by its members and for discipline for breach of those standards;
- (c) the Minister of Justice or the Minister of Finance to discharge any of their functions.

(2) Section 31 does not preclude the disclosure of information to a police officer not below the rank of inspector, or to the Director of Public Prosecutions, in relation to any criminal proceedings.

(3) Section 31 does not preclude the disclosure of information for the purpose of enabling or assisting an authority in a country or territory outside Bermuda (a “foreign authority”) to exercise functions corresponding to a competent authority’s functions under this Act.

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(4) But subsection (3) does not apply in relation to disclosures unless the competent authority is satisfied that the foreign authority is subject to restrictions on further disclosure at least equivalent to section 31 and this section.

[Section 32 subsection (4) amended by 2010 : 50 s. 8 effective 25 August 2010; Section 32 amended by 2010 : 50 s. 38 effective 25 August 2010]

Criminal offences

Offences relating to registration or breach of a directive

33 (1) A person or entity is guilty of an offence if the person or entity fails to comply with any requirement imposed under the following sections—

section 9 (carrying on business when not registered);

section 10(5) (failing to correct inaccuracy in application etc);

section 11(4) (false representation that authorised etc by competent authority);

section 30C(1) or (2) (registration of regulated professional firms).

(1A) A person or entity is guilty of an offence if the person or entity breaches a directive issued by the FIA under section 13A(1) or by a designated professional body under section 30H(1).

(2) A person or entity guilty of an offence under this section is 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.

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

[Section 33 amended by 2010 : 50 s. 39 effective 25 August 2010]

Offences relating to appeal tribunal

34 (1) A person who, having been required in accordance with regulations made under section 27 to attend the appeal tribunal 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.

(2) 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 section 27, 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;

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

Offence of disclosing restricted information

35 A person who discloses information in contravention of section 31 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.

Final provisions

Notices

36 (1) Subject to subsection (3), any notice or other document required or authorised by or under this Act to be given to or served on any person may be given to or served on the person in question—

- (a) by delivering it to him;
- (b) by leaving it at his principal place of business; or
- (c) by sending it to him at that address by facsimile, electronic mail or other similar means which produce a document containing the text of the communication.

(2) Any such notice or document may in the case of a company be given or served—

- (a) by delivering it to the company's principal place of business or registered office in Bermuda; or
- (b) by sending it by registered post addressed to the company's principal place of business or registered office in Bermuda.

(3) No notice or document required by this Act to be given or served on a competent authority shall be regarded as given or served until it is received; but such notice or document may be given by facsimile, electronic mail or other similar means which produce a document containing the text of the communication.

[Section 36 subsection (3) amended by 2010 : 50 s. 8 effective 25 August 2010]

Regulations and orders

37 (1) The Minister may make such regulations as the Minister considers necessary or expedient for the implementation of this Act, and regulations may make different provision for different cases.

(2) Regulations made under this section and orders made under section 2(2) (definition of AML/ATF regulated financial institution) and sections 20(4) and 30I(4) (breach of certain regulations may attract civil penalty) are subject to the affirmative resolution procedure.

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- (b) in paragraph (1) in the definition of “supervisory authority” for “financial institution” substitute “AML/ATF regulated financial institution”;
- (c) in paragraph (2) for “ “financial institution” means” substitute “ “AML/ATF regulated financial institution” means”.

(5) In regulation 4 of those Regulations (application), in paragraph (a) for “financial institution” substitute “AML/ATF regulated financial institution”.

(6) In regulations 10(2)(a), 10(2)(b), 11(2)(b), 12(1) and (2), 13(3) and (4), 14(2)(a), 14(2)(c)(i), 16(3) and 16(4) of those Regulations, for “financial institution” in each place substitute “AML/ATF regulated financial institution”.

Correction of errors relating to offences

40 (1) The Anti-Terrorism (Financial and Other Measures) Act 2004 is amended in section 13 (penalties) by renumbering the section as subsection (1) and inserting after it the following—

“(2) A person guilty of an offence under section 10A (tipping off) shall be liable—

- (a) on summary conviction, to a fine of \$15,000 or imprisonment for three years or to both;
- (b) on conviction on indictment, to an unlimited fine or to imprisonment for ten years, or to both.”

(2) In regulation 19(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (offences)—

- (a) for “section 13(1), (2), (4) and (5)” substitute “section 13(1), (2), (3) and (4)”; and
- (b) for “and 18(1)” substitute “17(1) and 18(1)”.

Commencement

41 This Act 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.

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SCHEDULE 1

(section 25)

APPEAL TRIBUNAL

CONSTITUTION OF TRIBUNAL

1 (1) The tribunal shall consist of a chairman, a deputy chairman and a panel of not less than five members, appointed by the Minister by notice published in the Gazette.

(2) For the purpose of hearing an appeal under this Act, the tribunal shall be composed of—

- (a) the chairman or deputy chairman; and
- (b) two members selected by the chairman or, in his absence, the deputy chairman.

APPOINTMENTS

2 (1) The chairman and deputy chairman shall hold office for a period of three years, and may be reappointed from time to time for a like period.

(2) The members of the panel shall hold office for a period of two years, and may be reappointed from time to time for a like period.

(3) During any period of time when the chairman or deputy chairman is absent from Bermuda or for any other reason unable to act the Minister may, by notice published in the Gazette, appoint a person to act in his place for that period of time, but shall not appoint a person unless that person is himself qualified under paragraph 3.

(4) The chairman, deputy chairman or any member of the panel may at any time, except during the course of proceedings before them under this Act, resign his appointment by notice in writing addressed to the Minister.

ELIGIBILITY FOR APPOINTMENT

3 (1) No person shall be qualified to be the chairman or deputy chairman unless he is a barrister and attorney of at least ten years' standing.

(2) No person shall be qualified to be a member of the panel unless he has relevant experience or knowledge of the financial services industry.

(3) A person shall not be eligible for appointment as chairman, deputy chairman or a member of the tribunal if he is or has at any time during the period of two years ending with his appointment been an officer, servant or agent of the BMA.

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VACANCIES

4 Where, during any proceedings, a vacancy occurs in the membership of the tribunal it may, with the consent of all parties, continue to act notwithstanding the vacancy; and no act, proceeding or determination of a tribunal shall be called in question or invalidated by reason of the vacancy.

TRIBUNAL AUTONOMOUS

5 In the exercise of the powers conferred on it by this Act, the tribunal shall not be subject to the direction or control of any other person or authority.

PROCEEDINGS

6 Parties to any proceedings before the tribunal may appear personally or be represented, by counsel or otherwise.

7 The tribunal may impose reporting restrictions where it considers it necessary or desirable to protect the privacy of parties to a hearing.

8 Save as otherwise provided by this Act or in regulations made by the Minister regulating the procedure to be followed by the tribunal, the tribunal shall regulate its own proceedings as it thinks fit.

[Schedule Heading amended by 2010 : 50 s. 42 effective 25 August 2010]

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SCHEDULE 2

(sections 3 and 11A)

REGULATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

Column 1: Non-financial business or profession	Column 2: Required to meet the fit and proper test in section 11A
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[Schedule 2 inserted by 2010 : 50 s. 42 effective 25 August 2010]

[Assent Date: 23 December 2008]

[Operative Date: 1 January 2009]

[Amended by:

BR 1 / 2010

2009 : 50

2010 : 50

2010 : 43]