



BERMUDA

PROCEEDS OF CRIME REGULATIONS (SUPERVISION AND ENFORCEMENT)
AMENDMENT ACT 2010

2010 : 50

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Regulated non-financial businesses and professions

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WHEREAS it is desirable to permit the Bermuda Bar Association and the Institute of Chartered Accountants of Bermuda, which are self-regulating organizations that have processes in place to ensure the professional conduct of their members and to protect the public, to jointly establish a Board to regulate firms of members of their respective organizations, in order to prevent money laundering and terrorist financing in Bermuda;

AND WHEREAS it is expedient to give professional bodies designated by the Minister of Justice powers to effectively monitor professionals and to take necessary measures for securing their compliance with regulations made under the Proceeds of Crime Act 1997 and the Anti-Terrorism (Financial and Other Measures) Act 2004;

AND WHEREAS it is expedient to expand the role of the Financial Intelligence Agency to include the prevention of money laundering and terrorist financing by designated non-financial businesses and professions and to make other technical amendments to the Financial Intelligence Agency Act 2007;

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:

Citation and commencement

1 (1) This Act may be cited as the Proceeds of Crime Regulations (Supervision and Enforcement) Amendment Act 2010.

(2) The provisions of this Act come into operation on a day or days to be appointed by the Minister responsible for Justice by notice in the Gazette.

PART 1

AMENDMENTS TO THE PROCEEDS OF CRIME REGULATIONS
(SUPERVISION AND ENFORCEMENT) ACT 2008

Amends section 1

2 Section 1 of the Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008 (the "principal Act") is amended by deleting the word "Regulations" and inserting before the word "Supervision" the words "Anti-Money Laundering and Anti-Terrorist Financing".

Amends section 2

3 Section 2 of the principal Act is amended—

(a) in the definition of "licensed person"—

(i) by deleting the words "licensed person" and substituting the words "licensed AML/ATF regulated financial institution";

(ii) by deleting the words "a person" and substituting the words "an AML/ATF regulated financial institution;" and

(iii) by deleting the word "who" and substituting the word "that";

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- (b) in the definition of “non-licensed person” by deleting the word “person” wherever it appears and substituting the words “AML/ATF regulated financial institution”;
- (c) in the definition of “officer” —
 - (i) by inserting immediately after the word “means” the words “— (a)”;
 - (ii) by inserting immediately after the words “agent of the BMA;” the word “or” and the following paragraph—
 - “(b) the supervisor or other member of the staff of a designated professional body;”; and
 - (iii) by deleting references to “the BMA” wherever they appear and substituting references to “a competent authority”.
- (d) in the definition of “professional body” by—
 - (i) deleting the words “or is representative of”; and
 - (ii) inserting before the semicolon the words “or which carries out the duties in section 5 in relation to that trade, profession, business or description of employment”; and
- (e) by inserting in alphabetical order the following—
 - “ “competent authority” means the BMA or the FIA;
 - “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;
 - “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

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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;

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

Amends section 3

4 Section 3 of the principal Act is amended by—

- (a) renumbering it as subsection 3(1);
- (b) deleting the full stop in paragraph (b) and substituting the words “; and”;
- (c) inserting immediately after paragraph (b) the following—

“(c) the FIA for a regulated non-financial business or profession;”; and

- (d) inserting immediately after that subsection the following—

“(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.”.

Inserts section 3A

5 The principal Act is further amended by inserting immediately after section 3 the following—

“Amendment of Schedule 2

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

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- (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.”.

Amends section 4

6 Section 4 of the principal Act is amended by deleting the words “section 3(b)” and substituting the words “section 3(1)(b)”.

Amends Heading to Part 3

7 The Heading to Part 3 of the principal Act is amended—

- (a) by deleting the words “The BMA” and substituting “Competent Authorities”; and
- (b) by deleting the words “of BMA” and substituting “of Competent Authorities”.

Amends certain references in Part 3

8 The principal Act is amended in Part 3—

- (a) by deleting references to “the BMA” wherever they appear in sections 7, 8(2), 10(1), (3), (4) and (7), 11(2), (3) and (4), 13(1) and (2), 14(5), 15, 19(1), 20(1) and (5), 21(1), 22(1) and (3), 23, 24(2), (3) and (5), 26, 27, 30(1) and 36(3) and substituting references to “a competent authority”; and
- (b) by deleting references to “the BMA” wherever they appear in sections 10(2) and (5), 13(3) and (4), 16(3), 17(3), 18(6), 20(6), 21(2), 22(1) and (2), 24(4) and 32(4) and substituting references to “the competent authority”.

Amends section 6

9 Section 6 of the principal Act is amended in subsection (2) by—

- (a) deleting the words “over licensed persons”; and
- (b) inserting after the words “regulatory Acts” the words “over AML/ATF regulated financial institutions which are licensed under the regulatory Acts”.

Inserts section 6A

10 The principal Act is amended by inserting immediately after section 6 the following—

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“Functions of FIA

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

Amends section 7

11 Section 7(1) of the principal Act is amended—

- (a) in paragraph (a) by deleting the word “non-licensed”; and
- (b) in paragraph (b) by deleting the words “AML/ATF regulated financial institutions or insurers” and substituting the words “persons or entities over which it has supervisory duties under section 6 or 6A”; and
- (c) in paragraph (c)(i) by deleting the words “against AML/ATF regulated financial institutions or insurers under section 20” and substituting the words “under section 20 against persons or entities over which it has supervisory duties under section 6 or 6A”;

Amends section 8

12 Section 8(1) of the principal Act is repealed and replaced by the following—

“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. ”.

Amends Chapter Heading

13 The Heading to Chapter 2 of Part 3 of the principal Act is repealed and replaced by the following—

“Chapter 2

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

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Amends section 9

14 Section 9 of the principal Act is repealed and replaced by the following—

“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.”.

Amends section 10

15 Section 10(3) of the principal Act is amended by—

- (a) deleting the word “and” at the end of paragraph (c);
- (b) deleting the full-stop at the end of paragraph (d) and substituting a semicolon followed by the word “and”; and
- (c) inserting after paragraph (d) the following—
 - “(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.”.

Amends section 11

16 Section 11 of the principal Act is amended—

- (a) in the introductory words of subsection (1) before paragraph (a) by deleting the words “The BMA” and substituting “A competent authority”;
- (b) in subsection (1)—
 - (i) by deleting the words “the BMA” in paragraph (b) and substituting the words “the competent authority”;
 - (ii) by deleting the word “or” at the end of paragraph (b) and adding it at the end of paragraph (c) and substituting a semicolon for the full stop at the end of that paragraph; and
 - (iii) by inserting immediately after paragraph (c) the following—
 - “(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.”.

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(c) in subsection (4) by adding the words “or entity” after the word “person”.

Inserts sections 11A and 11B

17 The principal Act is further amended by inserting immediately after section 11 the following—

“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 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.

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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;
- (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).

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(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.”.

Amends section 12

18 Section 12 of the principal Act is amended—

- (a) in the introductory words before paragraph (a)—
 - (i) by deleting the words “The BMA” and substituting the words “A competent authority”; and
 - (ii) by deleting the words “non-licensed person” and substituting the words “non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession registered by the authority under section 11”;
- (b) in paragraph (a)—
 - (i) by deleting the words “the BMA” and substituting the words “the competent authority”;
 - (ii) by inserting immediately before the semicolon the words “or (d)”;
- (c) in paragraphs (b) and (c) by deleting the words “non-licensed person” and substituting the word “person or entity”; and
- (d) in paragraph (d)—
 - (i) by deleting the word “BMA” and substituting “competent authority”;
 - and
 - (ii) by deleting the words “non-licensed person” and substituting the words “person or entity”.

Amends section 13

19 Section 13 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by deleting the words “a non-licensed person’s registration” and substituting the words “the registration of a non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession; and
 - (ii) by deleting the words “non-licensed person” and substituting “registered person or entity”;
- (b) in subsection (2)—

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- (i) by deleting the words “non-licensed person” and substituting “registered person or entity”; and
- (ii) by deleting the words “non-licensed person’s” and substituting “registered person’s or entity’s”; and
- (c) in subsections (3) and (4) by deleting the words “non-licensed person” wherever they appear and substituting “registered person or entity”.

Inserts section 13A

20 The principal Act is further amended by inserting after section 13 the following—

“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.”.

Amends section 14

21 Section 14 of the principal Act is amended—

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- (a) in subsection (2) by deleting the words “A non-licensed person must pay to the BMA” and substituting the words “An applicant for registration must pay to the competent authority to which it applies”; and
- (b) by repealing subsection (4) and replacing it with the following—
 - “(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.”.

Amends section 15

22 Section 15 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by inserting after the word “person” the words “or entity”; and
 - (ii) by deleting the words “non-licensed person” and substituting the words “non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession”; and
- (b) in subsection (3) by deleting the words “non-licensed person” and substituting the words “non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession”.

Amends Heading to Chapter 3

23 The principal Act is further amended in Part 3 by repealing the Heading to Chapter 3 and replacing it with the following—

“Chapter 3
Powers of Competent Authorities”.

Amends section 16

24 Section 16 of the principal Act is amended—

- (a) in subsection (1) by repealing the introductory words before paragraph (a) and replacing them with the following—
 - “(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—”;

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- (b) in subsection (2) by—
 - (i) deleting the words “an AML/ATF regulated financial institution or insurer” and substituting the words “a person or entity”;
 - (ii) deleting the words “institution or insurer” and substituting the words “person or entity”;
- (c) in subsection (7)—
 - (i) by inserting after the word “person” the words “or entity”; and
 - (ii) by deleting the word “he” and substituting the words “the person or entity”;
- (d) in subsection (8) by inserting the words “or entity” after the word “person”;
- (e) in subsection (9)—
 - (i) in paragraph (a) by deleting the words “AML/ATF regulated financial institution or insurer” and substituting the word “person”;
 - (ii) in paragraphs (b) and (c) by deleting the words “AML/ATF regulated financial institution or insurer” and substituting the words “entity”; and
 - (iii) in paragraph (d) by deleting the words “AML/ATF regulated financial institution or insurer” and substituting the word “person”; and
- (f) in subsection (10) in the meaning of “officer”—
 - (i) by inserting next after the words “body corporate,” the word “partnership”; and
 - (ii) by deleting the word “association” and replacing it with the word “body”.

Amends section 17

25 Section 17(1) of the principal Act is repealed and replaced by the following—

“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.”.

Amends section 18

26 Section 18 of the principal Act is amended in subsection (5)(a) by deleting the words “an AML/ATF regulated financial institution or insurer” and substituting the words “a person or entity that is supervised under section 6 or 6A by the competent authority by which the officer is employed”.

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Amends section 19

27 Section 19(1) of the principal Act is amended—

- (a) by inserting after the word “person” the words “or entity”; and
- (b) by deleting the word “he” and substituting the words “the person or entity”.

Amends section 20

28 Section 20 of the principal Act is amended—

- (a) in the section heading by deleting the words “on AML/ATF regulated financial institutions”;
- (b) in subsection (1)—
 - (i) by deleting the words “of such amount not exceeding \$500,000 as it considers appropriate”;
 - (ii) by inserting in paragraph (a) after the word “institution” the words “or a regulated non-financial business or profession supervised by it”; and
 - (iii) by repealing paragraph (b) and replacing it with the following—

“(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.”;

- (c) by inserting immediately after subsection (1) the following—

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

- (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.”;
- (d) in subsection (2), by deleting the words “subsection (1)” and substituting the words “subsection (1A)”;
- (e) in subsection (3)—
 - (i) by inserting immediately after the words “subsection (1)—” the following—

“(a) in relation to AML/ATF regulated financial institutions—”; and
 - (ii) by deleting the full stop at the end of the subsection, substituting semicolon and inserting the following immediately after it—

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- “(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).”;
- (f) in subsection (5) by deleting the words “AML/ATF regulated financial institution or insurer” and substituting the words “person or entity over which it has supervisory duties under section 6 or 6A”;
- (g) in subsection (6)—
 - (i) by deleting the words “an AML/ATF regulated financial institution or insurer” and substituting the words “a person or entity over which it has supervisory duties under section 6 or 6A”; and
 - (ii) by deleting the words “institution or insurer” and substituting the words “person or entity”.

Amends section 21

29 Section 21 of the principal Act is amended—

- (a) in subsection (1), by inserting after the word “institution” the words “or a regulated non-financial business or profession”; and
- (b) in subsection (2)(a) by deleting the word “institution” and substituting the words “person or entity”.

Amends section 22

30 Section 22 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “AML/ATF regulated financial institution or insurer” and substituting the words “person or entity over which it has supervisory duties under section 6 or 6A”;
- (b) in subsections (2) and (3), by deleting the words “AML/ATF regulated financial institution or insurer” and substituting the words “person or entity”.

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Amends section 23

31 Section 23(1) of the principal Act is amended by inserting after the word “person” the words “or entity”.

Amends section 24

32 Section 24 of the principal Act is amended—

- (a) in the section heading by deleting the word “BMA” and substituting the words “competent authority”;
- (b) in subsection (1) by deleting the word “BMA” and substituting the words “competent authority which is the supervisory authority over the person who pays the penalty”; and
- (c) in subsection (3), by deleting the words “AML/ATF regulated financial institutions and insurers” and substituting the words “persons or entities over which it has supervisory duties under section 6 or 6A”.

Replaces Part 4 Heading

33 The principal Act is further amended by deleting the heading to Part 4 of that Act and substituting the following—

“CHAPTER 5
APPEAL TRIBUNAL”.

Amends section 25

34 Section 25 of the principal Act is amended—

- (a) in subsection (1) by deleting the word “Act” and substituting “Part”; and
- (b) in subsection (2) by deleting the words “The Schedule” and substituting the words “Schedule 1”.

Amends section 26

35 Section 26 of the principal Act is amended—

- (a) in paragraph (a) by deleting the words “non-licensed person” and substituting “non-licensed AML/ATF regulated financial institution or regulated non-financial business or profession”; and
- (b) by inserting after paragraph (a) the following—

“(aa) to quash or vary a directive issued by the FIA under section 13A(1);”.

Amends section 29

36 Section 29(3) of the principal Act is amended—

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- (a) by deleting the words “the BMA” where they first appear and substituting the words “a competent authority”; and
- (b) by deleting the words “the BMA” where they subsequently appear and substituting the words “the competent authority”.

Inserts Part 4A

37 (1) The principal Act is amended by inserting immediately before Part 5 the following—

“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.

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

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.

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.

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

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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—
 - (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;

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- (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.

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—

- (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.

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.

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- (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
 - (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;

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- (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.

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 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.

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.

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(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 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.

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);

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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.

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

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.

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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.

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

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).

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

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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."

Amends section 32

38 Section 32 of the principal Act is amended—

(a) in subsection (1) by—

- (i) deleting the word "or" at the end of paragraph (b); and
- (ii) inserting after paragraph (b) the following—

"(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;"; and

(b) in subsection (3) by deleting the words "the BMA's" and substituting the words "a competent authority's".

Amends section 33

39 Section 33 of the principal Act is amended—

(a) in the section heading by inserting after the word "registration" the words "or breach of a directive";

(b) in subsection (1)—

- (i) by deleting the words "is guilty of an offence if he" and substituting "or entity is guilty of an offence if the person or entity";
- (ii) by substituting a semicolon for the full stop and inserting the following after that semicolon—

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“section 30C(1) or (2) (registration of regulated professional firms).”; and

(iii) by deleting the words “by BMA” and substituting the words “by competent authority”;

(c) by inserting after subsection (1) the following—

“(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).”;

(d) in subsection (2) by inserting after the word “person” the words “or entity”;
and

(e) in subsection (3) by deleting the words “is not guilty of an offence under this section if he” and substituting “or entity is not guilty of an offence under this section if the person or entity”;

Amends section 37

40 Section 37 of the principal Act is amended in subsection (2) by deleting the words “section 20(4)” and substituting the words “sections 20(4) and 30I(4)”.

Amends section 38

41 Section 38 of the principal Act is amended by—

(a) renaming it as section 38(1);

(b) deleting the word “person” and substituting the words “AML/ATF regulated financial institution”; and

(c) inserting immediately after section 38(1) the following—

“(2) Criminal proceedings shall not be instituted in respect of a contravention of section 30C committed during the six month period beginning on the day of commencement of Part 4A.”.

Amends Schedule

42 The principal Act is further amended by—

(a) in the Heading to the Schedule by inserting immediately after the word “Schedule” the figure “1”; and

(b) inserting immediately after that Schedule the Schedule to this Act.

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PART 2

RELATED AMENDMENTS TO THE BERMUDA BAR ACT 1974

Amends section 1

43 Section 1 of the Bermuda Bar Act 1974 (“the Bar Act”) is amended by inserting, in alphabetical order, the following—

“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;

“Barristers and Accountants AML/ATF Board” means the Board established by section 25A;

“regulated professional firm” and “firm” have the meanings given in section 2 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 in relation to regulated professional firms of barristers. ”.

Amends section 9

44 Section 9 of the Bar Act is amended in subsection (1) by inserting after paragraph (e) the following—

“(ea) fixing the fees payable by firms to defray the operational costs of the Barristers and Accountants AML/ATF Board and providing for penalties to be assessed against firms who fail to pay such fees, including the withdrawal of the practising certificates of barristers practising for such firms;”.

Inserts section 9A

45 The Bar Act is further amended by inserting immediately after section 9 the following—

“Rules respecting Barristers and Accountants AML/ATF Board

9A (1) The Bar Council, in conjunction with the Council of the Institute of Chartered Accountants of Bermuda, may make rules respecting the Barristers and Accountants AML/ATF Board, including rules—

- (a) for the nomination and appointment of the Chairperson and members of the Board;
- (b) prescribing the quorum, frequency of and place for holding meetings of the Board and the manner of decision-making at Board meetings;

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- (c) providing for monitoring of regulated professional firms and investigating their compliance with the AML/ATF Regulations;
- (d) governing the practice and procedure for imposing civil penalties on regulated professional firms under Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
- (e) establishing guidelines for expenditure by the Board of its approved budget; and
- (f) respecting the presentation of the Board's financial statements and the auditing of those statements.

(2) Every rule made under this section shall be approved by the Bar Council and Council of the Institute of Chartered Accountants of Bermuda and be subject to confirmation by the Chief Justice.

(3) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.”.

Amends section 17

46 Section 17 of the Bar Act is amended—

- (a) in subsection (1) by deleting the word “or” at the end of paragraph (c) and inserting immediately after that paragraph the following—

“(ca) contravenes the AML/ATF Regulations; or”; and

- (b) in subsection (3) by—

- (i) deleting the word “or” at the end of paragraph (b);

- (ii) deleting the full stop at the end of paragraph (c) and substituting the words “; or”; and

- (iii) inserting immediately after paragraph (c) the following—

“(ca) contravenes the AML/ATF Regulations.”; and

Inserts Part VA

47 (1) The Bar Act is further amended by inserting immediately after Part V the following—

“PART VA

BARRISTERS AND ACCOUNTANTS AML/ATF BOARD

Establishment

25A (1) There shall be established a joint Board of the Bermuda Bar Association and the Institute of Chartered Accountants of Bermuda under the

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name of the “Barristers and Accountants AML/ATF Board” which, upon designation by the Minister of Justice under section 4(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, shall have the powers and duties conferred by section 5 of that Act and any other statutory provision.

(2) The Board shall be a body corporate having perpetual succession and a common seal and, subject to this Act, shall have power to acquire, hold and dispose of moveable and immoveable property of any kind and to enter into contracts and to do all things necessary for the purposes of its functions.

(3) The Board may sue and be sued in its corporate name and may for all purposes be described by that name, to the use of which it shall have exclusive right.

(4) All documents, other than those required by law to be under seal, made by the Board and all decisions of the Board may be signified under the hand of the Chairman or any other member or officer authorized to act for him.

(5) The Board’s financial year shall be the period of twelve months ending on the 31st day of March.

Constitution of Board

25B (1) The Barristers and Accountants AML/ATF Board shall consist of—

(a) a Chairman, jointly appointed by the Bar Council and the Council of the Institute of Chartered Accountants of Bermuda to hold office for a term of 3 years; and

(b) a minimum of 4 and a maximum of 8 other members, one half of whom shall be appointed by the Bar Council and one half of whom shall be appointed by the Council of the Institute of Chartered Accountants of Bermuda, to hold office for terms of up to 3 years.

(2) The terms of office of appointed members shall be such as to ensure, so far as possible, the expiration in any such year of not more than one half of the terms of office of those members.

(3) The Chairman shall be appointed from persons who have at least 10 years of experience in the practice of law or accountancy in Bermuda and the other members of the Board from persons who have at least 5 years of such experience.

(4) The Bar Council may not appoint to the Board any person who is employed by, affiliated with or has a financial interest in, a regulated professional firm.

(5) The Board shall pay to the Chairman such remuneration as the Bar Council and the Council of the Institute of Chartered Accountants of Bermuda may determine.

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Supervisor

25C (1) The Barristers and Accountants AML/ATF Board shall engage a professional legal adviser or accountant with experience in regulatory compliance as Supervisor responsible for assisting the Board to ensure that regulated professional firms, comply with the requirements of Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and the AML/ATF Regulations.

(2) The duties of the Supervisor include—

- (a) providing guidance to regulated professional firms as to compliance with the AML/ATF Regulations;
- (b) acting as registrar of the register established under section 30B of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
- (c) carrying out on site and off site inspections of regulated professional firms to determine compliance with the AML/ATF Regulations;
- (d) making submissions to the Board respecting cases of non-compliance with the AML/ATF Regulations and making recommendations on the imposition of civil penalties; and
- (e) reporting to the Board on the compliance of regulated professional firms with the AML/ATF Regulations and making recommendations respecting further supervision and enforcement actions.

(3) The Supervisor shall disclose to the Bar Council any information that he receives in carrying out his duties that causes him to suspect that a barrister or professional company has committed an act that constitutes improper conduct under section 17.

Expenditure budget

25D (1) The Barristers and Accountants AML/ATF Board shall, not later than December 1 of the year before the commencement of the Board's financial year, submit to the Bar Council and the Council of the Institute of Chartered Accountants of Bermuda for approval estimates, in such form and in such detail as the Bar Council and Council of the Institute may require, of the Board's expenditure on operations in that financial year.

(2) The Board shall submit as soon as practicable to the Bar Council and Council of the Institute for their approval any proposed amendments to any such estimates.

(3) The Bar Council and Council of the Institute shall review the estimates and proposed amendments to the estimates without delay and shall not unreasonably withhold their approval.

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(4) The estimates and any amendments to them, when approved by the Bar Council and Council of the Institute shall constitute the Board's expenditure budget for that financial year.

(5) The Board shall not, without the approval of the Bar Council and Council of the Institute, spend in any financial year more than the total amount of expenditure approved for that financial year.

(6) In the management of its expenditure budget, the Board shall comply with any expenditure guidelines established by the Bar Council and Council of the Institute.

(7) Where a specific sum is provided in the Board's expenditure budget for any financial year in respect of any expenditure item, the Board shall not spend on that item in that financial year any amount in excess of that sum unless the excess expenditure either—

- (a) is made within the expenditure guidelines; or
- (b) has been approved by the Bar Council and Council of the Institute.

Accounts of the Board

25E (1) The Board shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in such form as the Bar Council and Council of the Institute of Chartered Accountants of Bermuda may direct.

(2) The statement of accounts must present fairly and accurately—

- (a) the financial transactions of the Board during the financial year to which they relate; and
- (b) the financial position of the Board at the end of the financial year.

(3) the Board shall within six months after the end of its financial year cause the statement of its accounts to be audited.

(4) Upon completion of the audit, the Board shall present the audited statements to the Bar Council and the Council of the Institute as soon as practicable after receiving it.”.

PART 3

RELATED AMENDMENTS TO THE INSTITUTE OF CHARTERED ACCOUNTANTS OF
BERMUDA ACT 1973

Amends section 1

48 Section 1 of the Institute of Chartered Accountants of Bermuda Act 1973 (the “ICAB Act”) is amended by inserting, in alphabetical order, the following—

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“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;

“Bar Council” means the Bar Council of Bermuda established under section 3 of the Bermuda Bar Act 1974;

“Barristers and Accountants AML/ATF Board” means the Board established by section 8A;

“regulated professional firm” and “firm” have the meanings given in section 2 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 in relation to regulated professional firms of accountants.”.

Inserts section 7A

49 The ICAB Act is further amended by inserting immediately after section 7 the following—

“By-laws respecting Barristers and Accountants AML/ATF Board

7A (1) The Council, in conjunction with the Bar Council may make by-laws respecting the Barristers and Accountants AML/ATF Board, including by-laws—

- (a) for the nomination and appointment of the Chairperson and members of the Board;
- (b) prescribing the quorum, frequency of and place for holding meetings of the Board and the manner of decision-making at Board meetings;
- (c) providing for monitoring of regulated professional firms and investigating their compliance with the AML/ATF Regulations;
- (d) governing the practice and procedure for imposing civil penalties on regulated professional firms under Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
- (e) establishing guidelines for expenditure by the Board of its approved budget;
- (f) respecting the presentation of the Board’s financial statements and the auditing of those statements; and
- (g) fixing the fees payable by firms to defray the operational costs of the Barristers and Accountants AML/ATF Board and providing for penalties to be assessed against firms who fail to pay such fees, including the suspension, termination or expulsion from the Institute of members practising with such firms.

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(2) No by-law nor any amendment to a by-law made under this section shall take effect unless it has been—

- (a) adopted by the Council and approved by a majority of the members voting thereon in accordance with the by-laws; and
- (b) approved by the Bar Council.

(3) Section 6 of the Statutory Instruments Act 1977 shall not apply to by-laws made under this section.”.

Inserts sections 8A to 8E

50 (1) The ICAB Act is further amended by inserting immediately after section 8 the following—

“Barristers and Accountants AML/ATF Board

8A (1) There shall be established a joint Board of the Institute and the Bermuda Bar Association under the name of the “Barristers and Accountants AML/ATF Board” which, upon designation by the Minister of Justice under section 4(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, shall have the powers and duties conferred by this Act, section 5 of that Act and any other statutory provision.

(2) The Board shall be a body corporate having perpetual succession and a common seal and, subject to this Act, shall have power to acquire, hold and dispose of moveable and immoveable property of any kind and to enter into contracts and to do all things necessary for the purposes of its functions.

(3) The Board may sue and be sued in its corporate name and may for all purposes be described by that name, to the use of which it shall have exclusive right.

(4) All documents, other than those required by law to be under seal, made by the Board and all decisions of the Board may be signified under the hand of the Chairman or any other member or officer authorized to act for him.

(5) The Board’s financial year shall be the period of twelve months ending on the 31st day of March.

Constitution of Board

8B (1) The Barristers and Accountants AML/ATF Board shall consist of—

- (a) a Chairman, jointly appointed by the Institute and Bar Council to hold office for a term of 3 years; and
- (b) a minimum of 4 and a maximum of 8 other members, one half of whom shall be appointed by the Institute and one half of whom shall be appointed by the Bar Council, to hold office for terms of up to 3 years.

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(2) The terms of office of appointed members shall be such as to ensure, so far as possible, the expiration in any such year of not more than one half of the terms of office of those members.

(3) The Chairman shall be appointed from persons who have at least 10 years of experience in the practice of public accounting or law in Bermuda and the other members of the Board from persons who have at least 5 years of such experience.

(4) The Council shall not appoint to the Board any person who is a partner in a regulated professional firm or is employed by, affiliated with or has a financial interest in, a corporate member.

(5) The Board shall pay to the Chairman such remuneration as the Institute and Bar Council may determine.

Supervisor

8C (1) The Barristers and Accountants AML/ATF Board shall engage a professional accountant or legal adviser with experience in regulatory compliance as Supervisor responsible for assisting the Board to ensure that regulated professional firms comply with the requirements of Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and the AML/ATF Regulations.

(2) The duties of the Supervisor include—

- (a) providing guidance to regulated professional firms as to compliance with the AML/ATF Regulations;
- (b) acting as registrar of a register established pursuant to section 30B of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
- (c) carrying out on site and off site inspections of regulated professional firms to determine compliance with the AML/ATF Regulations;
- (d) making submissions to the Board respecting cases of non-compliance with the AML/ATF Regulations and making recommendations on the imposition of civil penalties; and
- (e) reporting to the Board on the compliance of regulated professional firms with the AML/ATF Regulations and making recommendations respecting further supervision and enforcement actions.

(3) The Supervisor shall disclose to the Council any information that he receives in carrying out his duties that causes him to suspect that an accountant or professional company has committed an act that constitutes a disciplinary offence under the Institute's by-laws.

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Expenditure budget

8D (1) The Barristers and Accountants AML/ATF Board shall, not later than December 1 of the year before the commencement of the Board's financial year, submit to the Council and Bar Council for approval estimates, in such form and in such detail as the Council and Bar Council may require, of the Board's expenditure on operations in that financial year.

(2) The Board shall submit as soon as practicable to the Council and Bar Council for their approval any proposed amendments to any such estimates.

(3) The Council and Bar Council shall review the estimates and proposed amendments to the estimates without delay and shall not unreasonably withhold their approval.

(4) The estimates and any amendments to them, when approved by the Council and Bar Council shall constitute the Board's expenditure budget for that financial year.

(5) The Board shall not, without the approval the Council and Bar Council, spend in any financial year more than the total amount of expenditure approved for that financial year.

(6) In the management of its expenditure budget, the Board shall comply with any expenditure guidelines established by the Council and Bar Council.

(7) Where a specific sum is provided in the Board's expenditure budget for any financial year in respect of any expenditure item, the Board shall not spend on that item in that financial year any amount in excess of that sum unless the excess expenditure either—

- (a) is made within the expenditure guidelines; or
- (b) has been approved by the Council and Bar Council.

Accounts of the Board

8E (1) The Board shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in accordance with generally accepted accounting principles in such form as the Council and Bar Council may direct.

(2) The statement of accounts must present fairly and accurately—

- (a) the financial transactions of the Board during the financial year to which they relate; and
- (b) the financial position of the Board at the end of the financial year.

(3) The Board shall within six months after the end of its financial year cause the statement of its accounts to be audited and presented to the Council and Bar Council.

(4) Upon completion of the audit, the Board shall present the audited statements to Council and Bar Council as soon as practicable after receiving it.”.

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PART 4

RELATED AMENDMENTS TO THE FINANCIAL INTELLIGENCE AGENCY ACT 2007

Amends section 2

51 Section 2 of the Financial Intelligence Agency Act 2007 (“the FIA Act”) is amended by inserting, in alphabetical order, the following definitions—

“criminal conduct” means “drug trafficking” or a “relevant offence”, as defined in section 3 of the Proceeds of Crime Act 1997;

“proceeds of criminal conduct” includes the benefit from a drug trafficking or relevant offence as defined in sections 9(3) and 10(3) of the Proceeds of Crime Act 1997;”.

Amends section 8

52 Section 8 of the FIA Act is amended by inserting immediately after the words “1997” the words “, fees collected pursuant to regulations made under section 16A”.

Amends section 14

53 Section 14 of the FIA Act is amended—

(a) by repealing subsection (1) and replacing it with the following—

“(1) The FIA has the functions—

(a) of receiving, gathering, storing, analysing and disseminating information relating to suspected proceeds of criminal conduct, potential money laundering offences and potential terrorist financing offences; and

(b) conferred on it by section 6A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 in relation to regulated non-financial businesses or professions.”; and

(b) in subsection (2) by deleting the words “such information” and substituting the words “ the information referred to in subsection (1)(a)”.

Amends section 15

54 Section 15(1) of the FIA Act is amended by inserting after the words “relating to” the words “the suspected proceeds of criminal conduct or to”.

Inserts section 16A

55 The FIA Act is further amended by inserting after section 16 the following—

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"Fees

Regulations imposing fees

16A The Minister may, by regulations subject to the negative resolution procedure, set the application and annual fees to be paid to the FIA by regulated non-financial businesses or professions, as defined in the Proceeds of Crime Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, for the carrying out of its supervisory duties in respect to those businesses and professions under that Act."

Amends section 18

56 Section 18 of the FIA Act is amended in paragraph (b) by deleting the words "to discharge that Minister's" and substituting the words "or the Minister of Justice to discharge their".

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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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[Assent Date: 09 August 2010]

[Operative Date: 25 August 2010]