



19 July 2018

Dear Industry Stakeholders;

1. The Bermuda Government, in collaboration with the National Anti-Money Laundering Committee (NAMLC) and the various competent authorities, have been heavily engaged in preparing for the upcoming Mutual Evaluation of Bermuda's Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) regime. A positive outcome of this evaluation is central to preserving Bermuda's reputation as a highly regarded and well respected international financial centre.
2. The Bermuda Monetary Authority (the BMA or the Authority), with the co-operation of NAMLC and the other competent authorities, has been reviewing the AML/ATF regime as it relates to our supervised entities and has made tremendous strides in addressing the numerous gaps that existed previously. As we continue to assess the Financial Action Task Force (FATF) 2012 Recommendations (the Recommendations) and the 2013 Methodology (the Methodology), we noted that there are still some outstanding matters that need to be addressed through legislative amendments to the Proceeds of Crime 1997 (POCA), the Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA), the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (POCA Regulations), and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA).
3. The Authority identified gaps in the AML/ATF regime related to financial groups, as required by FATF Recommendations 18, 23 and 26. These requirements impose obligations both on financial groups and competent authorities of those financial groups.
4. The Recommendations require financial groups to:
 - a. Develop, document and implement a group-wide AML/ATF programme that should include the following:
 - i. Internal policies, procedures and controls;
 - ii. Group compliance function to ensure that the group effectively implements the requirements of the AML/ATF programme throughout the group;
 - iii. Policies and procedures to screen employees against high standards and when hiring employees;
 - iv. Ongoing employee training programme;
 - v. Independent audit function to test the group's AML/ATF programme; and
 - vi. Policies and procedures for sharing information, within the group, that will

support the group's ability to manage money laundering (ML) and terrorist financing (TF) risks.

- b. Information sharing mechanism within the financial group that should include:
 - i. Information for, and arising from, customer due diligence assessments;
 - ii. Information about the customer, the account(s) and transactions;
 - iii. Information and analyses on unusual or suspicious transactions and where such has generated a suspicious activity report (SAR) and whether the SAR has been filed; and
 - iv. Any other such information that supports the group's AML/ATF risk management programme.
 - c. Where the financial group operates in jurisdictions that do not have a comparable AML/ATF regime to that of the home country, the financial group must manage the additional risks and advise their competent authority.
 - d. Where a financial institution, which is a member of the financial group, relies on another member to conduct customer due diligence (CDD), the financial group must:
 - i. Apply the CDD measures, record-keeping requirements and manage risks associated with dealing with politically exposed persons (PEPs) as laid out in Recommendations 10, 11 and 12;
 - ii. Have and implement an AML/ATF group-wide programme as noted above; and
 - iii. Establish policies and procedures in this area, and ensure they are implemented.
5. Further the Recommendations require competent authorities to apply a risk-based supervisory approach depending on the financial group's risk profile. Competent authorities must consider factors such as:
- a. The nature, scale and complexity of the financial group, including the number, type of financial institutions within the group, and the level of supervisory discretion applied to the group and its financial institutions;
 - b. The ML/TF risks that the financial group is exposed to;
 - c. The financial group's overall AML/ATF programme, including its policies, procedures and internal controls;
 - d. The accessibility of relevant information required by competent authorities as they conduct their supervisory functions;
 - e. The level of compliance or (potential or actual) non-compliance by the financial group;
 - f. Any major changes or events that affect the financial group's management and operations;
 - g. The home country's competent authorities supervise the effective implementation of the CDD measures, recording keeping requirements and the AML/ATF programme at the group level and;
 - h. Competent authorities are required to periodically re-assess the financial group's risk profile to ensure proper alignment with its risk-based supervisory approach.

6. The Authority has had to work very quickly to address these gaps in the AML/ATF framework in order to adhere to the deadlines provided for the legislative amendments to be laid in the House of Assembly before the mutual evaluation begins. Notably, the aforementioned requirements will be embedded into POCA, ATFA, POCA Regulations and SEA.
7. The term financial group will be defined as a group, designated by the Minister of Legal Affairs upon the advice of competent authorities, which consists of a parent company or a legal person exercising control and coordinating functions over the rest of the group, together with branches and subsidiaries. The financial group will be designated where the group conducts activities under Section 42A(1) of the POCA.
8. Where the financial group is designated by the Minister, it will be done through Orders. Financial groups will have 12 months to comply with the AML/ATF legislative provisions *before the designation takes effect*.
9. While the above establishes the provision for a framework, the Authority appreciates the importance of consulting on its specific application, including when, how and which financial groups would be designated to comply.
10. The Authority intends to issue AML/ATF Guidance Notes for financial groups and will develop designation criteria, including materiality factors. We do wish to emphasise that we will be consulting with our stakeholders in the near future on the Guidance Notes, the designation process and any other components that are necessary to ensure compliance with legislation.
11. If you have any questions on this, please do not hesitate to contact policy@bma.bm.