

October 2018



2nd Floor, Boyle Building
31 Queen Street, Hamilton
Bermuda, HM11
T: 441-296-5577
E: info@amlatfboard.bm
WWW.AMLATFBOARD.BM

INFORMATION BULLETIN FOR THE LEGAL AND ACCOUNTING SECTORS

CHANGES TO ANTI-MONEY LAUNDERING AND ANTI-TERRORIST
FINANCING (“AML/ATF”) REGISTRATION, SUPERVISION AND
ENFORCEMENT REGIME

TABLE OF CONTENTS

(with executive summary)

Introduction

1. Key Changes and Obligations on Lawyers and Accountants in Independent Practice – Page 4

All law and public accountancy practices required to register with Board. Upon supply of detailed transaction information, The Board assesses registrant for designation as a “Regulated Professional Firm”. Supervision of RPFs on basis of new supervisory framework. Summary of recent changes to law and Bar/CPA rules and by-laws provided.

2. Registration – Initial – Annual renewal – Page 6

Process of registration explained, with sample forms and tables. Transitional arrangements for current regulated firms. Emphasis on underlying transactions undertaken by clients. Registration to be renewed annually. Change of circumstances to be reported to Board.

3. Determination of Registrant as “Regulated Professional Firm” - File Description Review - Legal Privilege – Page 7

Criteria for assessing registrant as an RPF provided. Explanation of meaning and method of file matter types description. List of transactions provided which fall within one of the classes of “specified activities”. Consider capacity of lawyer/accountant – advocate, advisor, official function. Firm’s own practice areas not relevant. See Schedule 4 for overview of analytical process.

4. Confidentiality & Anonymity – Page 9

The Board is bound by the principles of strict obligatory confidentiality. Information supplied to the Board is strictly confidential. Information supplied during the course of applying to register may be anonymised.

5. Systems Configuration – Data Harmonisation – Page 9

Explanation of intention to standardise file description nomenclature. New Rules on firms’ practice management to conform to standardised reporting formats. Interactive consultation planned.

6. Fit and Proper Person Test for Owners, Controllers, Directors and Senior Executives – Page 10

Persons involved in the ownership, control and management of legal or public accounting firms to be examined by Board for status as “fit and proper”. Same process as used by BMA (slightly different from Bar Council or CPA for individual professional licences). Criminals to be excluded. Failure to exclude results in striking from register. Non-registered firms commit criminal offence if they continue to advise in relation to “specified activities”.

7. Cancellation of Practising Certificate on Conviction of Indictable Offence – Page 11

On conviction of an indictable offence, individual barristers' or accountants' practicing certificates/membership in CPA is invalidated. Re-application possible. Registered firms must exclude convicted persons from ownership, control or management.

8. Integration of Supervisory Process with Professional Disciplinary Procedures - Professional Code recites certain POCA Requirements – Page 11

The Board's powers of sanction have been extended from the extremely serious options available under SEA now to include the more nuanced provisions of the disciplinary procedures of the Bar and CPA. Board will have direct standing at the Professional Conduct Committees of both Bar and CPA, with material weight given to Board recommendations. Certain provisions of POCA have been re-iterated in the Professional Code of Conduct for clarity and convenience.

9. Integration of Guidance Notes into Professional Practice – Page 12

Guidance Notes issued by the Board must be incorporated into firm's policies, procedures and practices (active). Professional misconduct if firms fail to observe guidance. Contrasts with prior purely defensive application of Guidance Notes (passive).

10. Separation of CSP/TSP Business from Legal Practice – Page 12

All law and public accounting firms to legally separate corporate service or trust service provider business from the professional practice. Exceptions available for small firms or firms agreeing to joint supervision with BMA.

Conclusion

CHANGES TO ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING (“AML/ATF”) SUPERVISORY AND ENFORCEMENT REGIME

Introduction

On 25 September 2018 certain provisions of the Bermuda Bar Amendment Act 2018 (“Bar Amendment Act”) came into Force. On 4th October 2018 a number of new Rules made under the Bermuda Bar Act 1974 (“Rules”) and By-laws (“By-laws”) made under the Chartered Professional Accountants of Bermuda Act 1973 (“CPA Act”) came into force. In addition to the foregoing, the CPA Act was amended on 24 October 2018 (“CPA Amendment Act”) to extend the definition of a public accountant to include certain other professional designations, requiring membership of such persons in the Chartered Professional Accountants Association of Bermuda (“CPA Bermuda”) and thus making them subject to the provisions of the CPA Act and its By-laws. Together, the new statutes, Rules and By-laws substantially alter the landscape of anti-money laundering and anti-terrorist financing supervision and enforcement for the legal and public accounting professions.

A summary of the legislative and rule/by-law changes is set out in Schedule 1 to this Information Bulletin (“amendments”). A final round of changes will take effect on 31 January 2019, when the practice certificate and fit and proper person certificate sections of the Bar Amendment Act come into force. Of equivalent significance for the accounting profession is that the class of accounting practitioners now subject to the disciplinary provisions of the CPA By-laws has been widened by the CPA Amendment Act, with the By-laws themselves now including professional obligations to comply with the AML/ATF supervisory and enforcement regime.

The purpose of the amendments was to close gaps identified during the National Risk Assessment 2017 (“NRA 2017”) and to implement the recommendations of the Financial Action Task Force (“FATF”) in relation to the risks inherent in the giving of professional advice to clients when such clients enter financial or real estate transactions connected to any of the “specified activities” set out in section 49(5) of the Proceeds of Crime Act 1997 (“POCA”). The principles underlying the amendments were presented to Bar Council and to CPA Bermuda in late 2017 and were subsequently circulated to all members of the Bar Association and CPA Bermuda both conceptually in a memorandum from the Board and then concretely by way of distribution of the draft legislation and Rules/By-laws before they went to the Legislature. The Board also conducted a “Town Hall Meeting” on 30 November 2017 to introduce the project.

Nevertheless, this Information Bulletin is intended to advise lawyers and public accountants in independent practice, whether as sole practitioners, in partnership or as professional companies of the content of the new AML/ATF regulatory regime. At the same time, the supervisory framework has been updated to establish itself on the risk-based approach required by FATF. Formerly, supervision emphasised compliance with the AML/ATF detection and prevention measures set out in the Proceeds of Crime (Anti-Money Laundering and Antiterrorist Financing) Regulations 2008 (“POCA Regulations”). The new approach is to consider the risk profile of professional advisers in relation to their client bases, the services offered and the geographical spread of their business. Compliance remains very much relevant, indeed obligatory, but it is the overall risk rating of a firm which will primarily determine the scope of its supervision by the Board. A copy of the Board’s new supervisory framework is set out in Schedule 2 to this Information Bulletin.

1. Key Changes and Obligations on Lawyers and Accountants in Independent Practice

- All lawyers and public accountants in independent practice are required to register with the Board.
- The registration process requires detailed disclosure of client transactions relating to financial matters or real estate so as to enable proper analysis by the Board whether the professional adviser is assisting in the preparation for or carrying out of “specified activities”. It will be sufficient if there is one such matter to trigger the designation of “regulated professional firm” (also “RPF”).
- Where the Board determines that a professional adviser advises in transactions related to “specified activities”, such professional adviser will be designated as a “regulated professional firm” for the purposes of the Proceeds of Crime (Anti-money Laundering and Anti-terrorist Financing Supervision and Enforcement) Act 2008 (“SEA”). Any firm not so designated is forbidden by criminal sanction as well as professional rules from advising in relation to specified activities.
- The statutory powers of the Board to supervise and enforce regulated professional firms for compliance with POCA, SEA and related regulations remain in accordance with SEA as originally enacted. However, the supervisory process will be conducted on the risk-based approach, so that the Board’s resources will be concentrated on those firms assessed as high risk.
- To supplement the Board’s statutory powers and therefore offer a more subtle range of sanctions, the Rules and the By-laws have been amended to give the Board full and direct standing in the professional disciplinary process in the event of infractions of SEA or any directive of the Board to an RPF thereunder. Non-compliance with the Board may result in sanctions under existing Bar Tribunal rules/CPA By-laws up to and including cancellation of a practicing certificate/revocation of certificate of recognition/Membership in CPA Bermuda.
- The enrolment of barristers at the Supreme Court is predicated on production of a fit and proper person certificate by Bar Council. Such certificate is issued in accordance with new Section 10E of the Bar Act et. seq.
- Issuance of a practising certificate by Bar Council is likewise tied to production of a fit and proper person certificate together with proof that the barrister or his firm is registered with the Board. Cancellation of registration with the Board prevents renewal of a practicing certificate or renewal of the certificate of recognition for professional companies.
- Membership of CPA Bermuda is predicated upon issuance of a fit and proper person certificate issued by CPA Bermuda. The basis of issuance of the FPP certificate is set out in a Form mirroring the equivalent provisions in the Bar Act.
- Corporate membership requires proof of registration with the Board.
- Registration with the Board requires a fit and proper person analysis of all directors, controllers and senior executives of the registrant. The Board uses section 11A of SEA as the basis for its FPP analysis.
- Failure by a registrant to exclude a person found not fit and proper results in cancellation of registration by the Board. Continuing to advise in relation to ‘specified activities’ without being registered is a criminal offence pursuant to section 33 of SEA.

- Barristers immediately to report all convictions whether in Bermuda or abroad to Bar Council. Members of CPA Bermuda immediately to report all convictions whether in Bermuda or abroad to CPA Bermuda.
- Conviction of an indictable offence results in immediate cancellation of the convict's practicing certificate/ membership of CPA Bermuda. The convict may also be removed from the Roll at the Supreme Court. Re-application for admittance/membership is permitted.
- Registrants are required to inform the Board of any changes in the nature of their business, in particular if they start to advise in relation to specified activities, and may be required to maintain professional files in a manner which identifies certain key criteria. For non-regulated registrants, the disclosure requirement is immediate. For regulated registrants, disclosure is made on renewal of registration.
- Registrants to transfer any corporate service provider or trust service provider business to a separate subsidiary, and to maintain separate compliance systems for such subsidiary (group co-ordination permitted/expected). Exemptions available for small practices and on request if joint supervision with BMA is accepted.
- Registrants may be required to adapt file opening procedures to capture defined matter types or transaction details. Annual filing of such (anonymised) details for statistical and analytical purposes.
- Integration of Board's Guidance Notes into professional practice.

In connection with the foregoing, the Board has re-designed its application form and provided a supporting Annex which sets out a non-exhaustive list of examples of the types of transactions which are members of the five classes of "specified activities" described in POCA Section 49(5). Sample registration Form and Annex are attached in Schedule 3. The Annex of matter types describes client transactions connected with "specified activities" in respect of which a lawyer or accountant might advise. These examples are drawn from the Financial Action Task Force report on the vulnerabilities of the legal profession: <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf> ("FATF Report"). Please note, this list is not exhaustive and in future the Board will meet with firms to settle a financial systems-based means of tracking matter types according to standardised definitions, which will more carefully distinguish between client files falling under the various heads of "specified activities" and those which do not. Apart from assisting to define those firms to be designated as "regulated professional firms", the matter type analysis will also assist firms themselves to know which files are to be maintained in accordance with the POCA Regulations and likewise assist the Supervisor to select files for review in the course of supervisory assessments. Please note the distinction between analysis for the purposes of designation as a "regulated professional firm" as opposed to supervisory review post-registration, which is conducted on the basis of the Supervisory Framework exhibited at Schedule 2

For the purposes of initial registration and annual renewal, the Board emphasizes that it conducts its analysis at the transaction level for the purposes of determining whether a registered firm is to be a "regulated professional firm" for the purposes of SEA. That is to say, a firm's own broad practice descriptions of "litigation" or "commercial" or "trust" are not the primary consideration. The question is not whether firms themselves conduct "specified activities". Rather it is the underlying nature of each and every client matter or file opened by a lawyer or public accounting firm. The consideration then is

whether a professional adviser “participates” in that activity by way of assisting the client to prepare for or carry out that underlying transaction.

The Board recognises this approach may require a new way of thinking about professional work. Practitioners are therefore encouraged to read the FATF Report. The essential concept is to follow the money, file by file, and ask in what contexts a professional adviser could by his or her advice, or via the firm’s client accounts, assist a client to enable money to move or the client’s own financial position to change.

PLEASE NOTE: Registration is NOT a risk-assessment. That is for the supervisory process after designation as a regulated professional firm. By contrast, the disclosures at the registration stage are part of a filtration process which looks solely at the classification of client transactions. There is no assumption that a client is doing anything wrong. Rather, the point is to classify transactions according to the FATF criteria embodied in Section 49(5) of POCA. Thus, Registration is Stage 1 and Supervision is Stage 2, being a separate process post designation as an RPF. See Schedule 2 for the framework of supervision.

2. Registration – Initial – Annual renewal

All lawyers and accountants in independent practice are now required by law to register with the Board. The Board expects that every lawyer or accountant in independent practice, whether established as a sole practitioner, a partnership or as a professional company, will register with the Board not later than 31st January 2019. Thereafter, registration must be renewed annually before the end of January in each year. Regulated Professional Firms already registered as at the date hereof must renew their registration by 28 February 2019.

A transitional arrangement for currently regulated professional firms is in effect. Such RPFs on the register as at the date of issue of this Information Bulletin may re-register on supply of the Registration Form shown in Schedule 3 together with a statement of files opened corresponding to Annex 2 to that Registration Form and the documents referred to below. That is to say, for current RPFs, there will be no need to supply Annex 1 of the Registration Form (See Schedule 4 to this Bulletin). The transition period is for the year 2019 only.

By providing a statement of files opened which correspond to any matter type set out in Annex 2 to the Registration Form, a firm acknowledges that it is to be designated as a Regulated Professional Firm. Non-provision of such statement or any statement to the effect that the Annex is not applicable must be supported by completion of Schedule 4. In cases of doubt, the Board may exercise its powers to require information pursuant to sections 30C and 30D of SEA.

Registration requires completion of the Form shown in Schedule 3, supported by:

- 1) An organisational chart, showing the law or accounting practice (“professional firm”), together with all its owners, controllers, subsidiaries and affiliates;
- 2) A list of partners and directors of all entities in (1) above;
- 3) A list of senior executives in the professional firm, being per section 11B(4) of SEA such persons who, under the immediate authority of a director or chief executive of the professional firm —
 - (a) exercises managerial functions; or
 - (b) is responsible for maintaining accounts or other records;

- 4) A Spreadsheet or Table in the form of Schedule 4 of all files opened by the Professional Firm in the 6 (six) months preceding the date of application for registration¹; and
- 5) Payment of the requisite fee.

The fees for Registration are:

- Initial: \$250
- Annual: \$150
- Fit and Proper Person Certification: \$100 per individuals named pursuant to (1), (2) and (3) above. The process for obtaining a fit and proper person certificate is described in the paragraph headed “Fit and Proper Persons Test” below and the form to be completed in respect of each such person is shown in Schedule 5.

Registration may be effected online at the following address: www.amlatf.bm or submitted in paper format sent to the Board’s offices:

The Barristers and Accountants AML/ATF Board
Boyle Building, 31 Queen Street - Suite 210
Hamilton
HM 11
Bermuda

Registration is to be renewed annually in January of each year, following the registration procedures referred to above and supplying all supporting documents, including Schedule 4 for all registrants irrespective of prior designation as a Regulated Professional Firm. For current RPFs, this means from 2020 they will be required to submit a Schedule 4 table.

Ultimately, the Board intends to enable electronic data transfer to simplify the collation of the information referred to in Schedule 4. The Board is aiming to have a standardised system of file descriptions agreed with registered firms, with such file data captured in firm’s billing systems and supplied in anonymised summary database format to the Board from 2021 onwards in lieu of Schedule 4.

3. Determination of Registrant as “Regulated Professional Firm” - File Description Review - Legal Privilege

After registration, the Board will determine whether the registrant is to be a Regulated Professional Firm (“RPF”). The consequence of being determined to be an RPF is to become subject to the full risk-based supervisory regime described in Schedule 2. In that regard, the full powers of the Board expressed in section 30D onwards of SEA may be applied. For those firms not so determined to be RPFs, they remain on the register with a duty per section 30C(2) of SEA to update the Board in the event of any change of circumstances or the discovery that any data supplied at the time of registration is inaccurate or incomplete. It is a criminal offence under SEA and improper conduct under the Bermuda Bar Act to participate in specified activities unless designated as an RPF.

¹ See transitional arrangement above for currently regulated professional firms

The Board is conscious of both the practicalities of the RPF determination process, in terms of the volume of material to be examined in order to make a proper determination, as well as the potential application of the rules on legal privilege set out in Section 7 of POCA and section 30D(6) of SEA.

With respect to a preliminary examination of files for the purpose of determining whether the client was participating in a financial or real estate transaction relating to any one of the “specified activities”, the Board does not propose to examine the contents of any file at the application for registration stage, but rather will look only to a set of descriptors (“meta-data”) which must be provided to the Board in the tabular or spreadsheet format shown in Schedule 4 with respect to every file opened by the registrant during the six months preceding the date of application to register with the Board. The descriptors are:

- Description of Client e.g. natural person, body corporate, trustee, public authority (disclosing whether such client is a Politically Exposed Person for the purposes of regulations 5, 6 and 11(6)A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (“Client”).
- Description of Service provided: (a) advocacy before any court or tribunal; or, (b) advisory, whether as to rights, obligations, procedures, structures or otherwise; or, (c) office holder e.g. liquidator, receiver, administrator, mediator, power of attorney; nominee.
- Description of Product offered by Firm to Client i.e. practice group such as Funds, Insurance, Capital Markets, Debt Recovery, Liquidations
- Nature of Transaction contemplated by Client: (a) financial i.e. any change in the client’s status having value in money or money’s worth; or (b) real estate i.e. going to the acquisition, ownership or management of any interest in real property; or, (c) non-transactional/not applicable.
- Description of Transaction: provide a file name or matter type using the terminology provided in the Annex, or, if no equivalent appears in the Annex, provide a short statement of the work done on the file (“Client Transaction”).
- Classification of Client Activity: state which of the Classes set out in POCA Section 49(5) the Client Transaction falls under, if any:
 - buying and selling real property;
 - managing of client monies, securities and other assets;
 - management of bank, savings or securities accounts;
 - organisation of contributions for the creation, operation or management of companies;
 - creation, operation or management of legal persons or arrangements, and
 - buying and selling business entities.

Refer to the Registration Form Annex in Schedule 3 and the FATF Report for guidance.

- State whether the Client instructed the Firm directly or whether instructions came via an intermediary
- State Country of Residence of Client
- State *situs* of the Client Transaction

As to legal privilege, the Board takes the view that none of the descriptors referred to above is privileged for the purposes of Section 7 of POCA and section 30D(6) of SEA. Such meta-data is not a “communication” between lawyer and client. That is to say, they are factual matters going to the opening of a client file which do not directly relate to the giving of advice. “Meta-data” such as a standardised file

description or *situs* of a transaction is not to be included within the concept of legal privilege for the purposes of AMLATF supervision by reason of the exceptions under Section 7 of POCA and Section 30D of SEA read together with the provisions of section 30C(1) of SEA entitling the Board to information going to the nature of a firm's business and activities. "Legal Privilege" specifically already makes exception for the name and address of the client. Accordingly, in addition to those two criteria, the Board considers matters *sui generis* with a client's name and address to be excepted. The Board thus understands legal privilege to extend to specific (separate) communications and not to the entirety of a file, nor, in particular, to general meta data which describe the nature and purpose of a transaction for regulatory purposes.

Finally, the Board emphasises that communications made for the purpose of furthering crime are wholly excluded from privilege by Section 7 of POCA, with a client's failure to comply with the CDD requirements of the POCA Regulations being (among other things) evidence of bad faith.

Generally, the Board encourages Professional Firms to approach the registration requirement in a spirit of openness as well as a consciousness of the national exigency to demonstrate effective compliance with international standards for anti-money laundering and anti-terrorist finance. The elements the Board is calling for are all anticipated by FATF standards. Registrants may be also assured of absolute confidentiality.

4. Confidentiality & Anonymity

The Operating Principles of the Board expressly provide for obligatory confidentiality. Accordingly:

The Board shall not disclose and shall keep fully confidential (unless required to disclose by law, or as purely statistical information) all information of any nature which it receives from a registered firm, and whether regarding the firm, its business or any of its owners, controllers, directors or senior executives. The Board shall ensure that the Supervisor, the supervisory staff and any third party which might be engaged by the Board from time to time likewise maintains full confidentiality in respect of all information collected by them during the course of registration of a firm or its subsequent supervision, or during the fulfilment of any third-party contract.

In addition, data supplied by a registrant to the Board in the course of registration may be stripped of factors which would identify specific clients. The Board's interest at the point of registration is in the type of transactions advised upon. Later, at the supervisory stage, the identify of clients may be relevant, in particular in relation to Politically Exposed Persons. Accordingly, specific files reviewed for the purposes of supervision will not benefit from anonymity.

5. Systems Configuration – Data Harmonisation

The new Rules/By-laws empower the Board to direct that the financial accounting systems of registered firms be adapted so as to capture certain information at the point of file opening. The specific data to be recorded in the accounting system fields relating to an individual client matter would then be expressed using a harmonised terminology. Accordingly, when all firms collect data in the same way, using standard matter descriptors, firms will be able to supply reliable statistical data to the Board. It will also make the registration process simpler and quicker. In turn, the Board will be better able to assess product and

sectoral risk. Likewise, the Board will be better able to contribute to national statistics as mandated by law.

The Board intends to begin consultations with the financial and information technology officers of registered firms with respect to harmonised data collection during the course of 2019, with a view to implementation for the financial year ending 31 December 2020. Thereafter, annual filing by each registrant of such (anonymised) data is to be made in spreadsheet or database format for statistical and analytical purposes. This is a separate exercise from the risk data collected during the supervisory process on a subjective firm by firm, standalone basis. That data goes to risk profiling of the specific firm. By contrast, the objective, harmonised data collected above goes to overall trend analysis and industry statistics. In any event, the objective data embedded in file formatting will support a firm's own self-risk assessment for the supervisory risk analysis process.

6. Fit and Proper Person test for Owners, Controllers, Directors and Senior Executives

During the course of considering by way of file analysis whether a registrant is to be an RPF, the Board also examines the Owners, Controllers, Directors and Senior Executives of the registrant to see if such persons are "fit and proper persons", based on section 11A of SEA. The meaning of "director", "controller" and "senior executive" is set out in section 11B of SEA.

That is to say:

"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 RPF are, or are likely to be, in any way threatened by his holding that position. 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—

- committed an offence involving fraud or other dishonesty or violence;
- contravened any provision made by or under any enactment appearing to the Board to be designed for protecting members of the public against financial loss due to—
 - dishonesty, incompetence or malpractice by persons concerned in the provision of services by the firm or the management of companies; or
 - the conduct of discharged or undischarged bankrupts;
- engaged in any business practices appearing to the Board to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;

and

- 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."

The tests in Section 11A are broadly similar to the new provisions of Section 10E of the Bar Act, which will come into force on 31 January 2019 in relation to individual practitioners. The main focus of the Board is

criminality, being the principal FATF concern in relation to entering the professions or controlling professional firms in the provision of services related to “specified activities”. To that end, the Board has licensed WorldCheck software, hence the charges to defray the costs of the licence. This process is supplemented by an amendment to the Barristers’ Code of Professional Conduct (new Rule 6(vi) requiring barristers to report any convictions. The Board would then consult with Bar council so as to cross-check its own research.

In the event an Owner, Controller, Director or Senior Executive is assessed not to be a fit and proper person, then the registrant (i.e. any firm and not just RPFs) must exclude such person from their position of ownership, control, direction or senior executive status. Failure to do so will result in such firm being struck from the Register per Section 30C(5) and a disciplinary complaint directly to the Bar Professional Conduct Committee of the Bermuda Bar Association per the new Rules or to CPA Bermuda, as the case may be.

Where relevant, the Board will endeavour to avoid duplication in the FPP certification process as between the Board review of controllers, directors and senior executives and Bar Council issuance of practising certificates to the same persons.

7. Cancellation of Practising Certificate on Conviction of Indictable Offence

Per Section 10F of the Bermuda Bar Act and By-law 73 of the CPA Bermuda By-laws, all barristers and all members of CPA Bermuda are now liable on conviction of an indictable offence anywhere in the world to the cancellation of the convict’s Bermuda Bar practicing certificate/ membership of CPA Bermuda. The convict may also be removed from the Roll at the Supreme Court. Re-application for admittance/membership is permitted. However, such conviction must be reported to Bar Council, CPA and to the Board in respect of any professional firm or sole practitioner registered with the Board (which all must be). To the extent the convict is an owner, controller, director or senior executive of the firm, such convicted person must be excluded from those positions of ownership, control, directorship or senior executive status.

8. Integration of Supervisory Process with Professional Disciplinary Procedures - Professional Code recites certain POCA Requirements

Integration with Discipline

The Barristers Code of Professional Conduct, the Bar Professional Conduct Committee Rules, the Bar Disciplinary Tribunal Rules and the CPA Bermuda by-laws have all been amended so that the Board has standing on its own motion to complain directly to the body of either organisation responsible for discipline. Further, apart from making a complaint, the Board’s opinion on the disciplinary action to be taken in the particular case is to be obtained and given material weight. These provisions accord to the extent possible in the Board’s hybrid situation with the requirement of FATF Recommendation 28 that the body responsible for AML/ATF supervision should have a range of sanctions available directly to it. The “improper conduct” which may be complained of has been extended from solely compliance with the POCA Regulations to include compliance with SEA and the actions taken by the Board in the exercise of its supervisory functions. Existing sanctions under SEA were considered to be too heavy-handed in relation to the small infractions encountered to date, which, had action been required, would have been better dealt with under the more expansive Bar/CPA disciplinary process with its capacity for subtler sanctions.

One possible sanction is now an order from the Disciplinary Tribunal or CPA Professional Conduct Committee that the firm complained of be excluded from practising in certain areas; that is to say, in relation to “specified activities”.

Convenience

For ease of reference, a number of the provisions of POCA and its Regulations have been recited explicitly in the Bar Code of Professional Conduct. The purpose is both for convenience of research by firms and by way of aggregating in one place the elements of particular importance in terms of the professions’ relations with the Board. In addition, the recited statutory text becomes directly integrated into the Code/By-laws.

9. Integration of Guidance Notes into Professional Practice

All practitioners must now incorporate the Board’s Guidance Notes into their professional practice. It was already the case that registered firms only enjoyed a defence in court against a charge under POCA for breach of its Regulations to the extent they could show compliance with any relevant guidance. However, irrespective of any breach of the POCA Regulations, it is now a matter of professional misconduct to fail to integrate all aspects of the Board’s Guidance into the management of a registered firm’s legal or accounting practice. For these purposes, integration means that the substance of the Guidance manifests itself in all relevant procedures and policies of the firm. The Board has power pursuant to section 30C(1) to call for proof of such integration.

10. Separation of CSP/TSP Business from Legal Practice

Rule 7 of the Bermuda Bar (Barristers and Accountants AML/ATF Board) Rules 2018 require all firms with a turnover of more than \$250,000 or for whom corporate service business constitutes more than 10% of their business to transfer and operate the corporate service provider (“CSP”) aspect of their business to a separately incorporated affiliate. Rule 8 applies a similar requirement to any other type of licensable business, e.g. trustee services provider business (“TSP”). To the extent possible, such affiliate is then to be managed at arm’s length from an AML/ATF perspective, to ensure that risk analysis is focussed on the specific entity without cross-over from an affiliate. The resultant group of entities under common ownership can, of course, pool resources and harmonise policies. However, the essential point is to ensure that AML/ATF compliance and risk mitigation is applied on an entity by entity basis.

Exemptions are available for small firms or small CSP/TSP practices. Or firms may agree to joint supervision between the Board and other regulators.

The supervisory reason for the separation is 1) to reduce systemic risk, in circumstances where CSPs have a different risk profile from their affiliated professional firms, but are nevertheless “mixed” under one compliance regime; and 2) to avoid where possible the result that a professional firm falls to be regulated simultaneously by two separate AML/ATF supervisory authorities.

The Board (as responsible for professional firms) and the Bermuda Monetary Authority (as responsible for CSPs and TSPs) have agreed systems for joint supervision of “mixed” practices where necessary as well as for co-ordinated supervision of groups that include separate affiliates conducting, variously, law/accounting as well as CSP or TSP business.

Conclusion

There can be no doubt that, the world-over, a tremendous shift has occurred in the conduct of business as a result of demands to prevent and detect money-laundering or the financing of terrorism. Clients now expect extended background checks. Previously, this was most evident in obtaining banking services. However, FATF has extended its critique to other sectors, with a particular focus on lawyers and accountants. Being offshore adds to pressure directed at Bermuda by FATF. Accordingly, Bermuda lawyers and accountants are obliged to abandon old ways of conceiving of their work. They do not practice in isolation as mere counsel. Rather, FATF conceives of lawyers and accountants as gateways to the laundering of the proceeds of criminal conduct. Such gateways are to be found in nearly every practice area, from corporate to litigation. That is the reality. And the consequence of that reality is the extensive changes made to Bermuda's statutory and professional regimes during the course of 2018 which emphasise the requirement for professionals to dig deep into their client files to understand the true risks. At the same time, professionals are to be fully bound into the supervisory process, with background checks on those who control the gateways.

The specific changes required to law and regulation were identified during the National Risk Assessment 2017 ("NRA 2017"), but the full implications of the changes will only become clear over time as they impact daily practice within professional firms. A costly burden has been imposed, but the alternative is for Bermuda to be shut out of the international financial system.

The Board intends to conduct several open meetings over the coming months to explain the new regime, to get feedback from industry and to help firms make the necessary transitions. This Information Bulletin is therefore just the start of a process of implementation and training that the Board recognises will take several years to get right. The ultimate ambition is that, by the time of the next National Risk Assessments, being three years after the last NRAs (2016 for the Terrorist Financing NRA and 2017 for the Money Laundering NRA, both the legal and accounting sectors will see their sectoral risk rating from NRA 2017 reduced from Medium High to Medium or lower. Likewise, the ideal will be to see all individual firms having individual risk ratings of medium to low.

26 November 2018

SCHEDULE 1

Bermuda Bar Amendment Act 2018 (sections in force)

Section 1 - Citation

Section 2 - Definition of director, controller and Senior Executive by reference to Section 11B of POCA AML/ATF Supervision and Enforcement Act 2008.

Section 3 - Enabling provision for Rules in relation to the Barristers and Accountants AML/ATF Board

Section 12 - Revocation of certificate of recognition in the event a professional company fails to register with the Board.

Section 13 - Adds compliance with SEA Part 4A and with directions from the Board made under SEA to the definition of improper conduct for the purposes of the Bar Code of Professional Conduct

Section 14 - the Board is to have standing of its own motion before the Bar Professional Conduct Committee.

Section 17 – Adds Part 4A of SEA to the Board’s functions expressed in section 25A of the Bermuda Bar Act 1974.

Section 18 - Adds SEA to the definition of the duties of the Supervisor under Section 25C of the Bar Act.

Section 20 - Amends SEA to require all firms to register with the Board and renew annually.

Provides that the Board is to make the determination whether a firm is to be regarded as a regulated professional from by way of analyzing whether such firm participates in specified activities (as defined in POCA 49(5)).

Introduces a fit and proper person requirement for all owners, controllers, directors and Senior Executives of registered firms

Board may cancel the registration of any registered firm any registered firm if, among other things, any one of these persons is found not to be a fit and proper person and is not excluded from the firm after notice from the Board.

(If a firm is struck from the register it is illegal for such firm thereafter to give advice to clients in connection with specified activities per section 33 of SEA).

Bar Disciplinary Tribunal Amendment Rules 2018

Clause 1 (“Citation”) Clause 1 is self-explanatory.

Clause 2 amends rule 2 (“Application and interpretation”)

Amends the definitions of “complainant” to include the AML/ATF Board (ie the Board). Also, the definition of “respondent” is amended to include the Board as a complainant. Lastly, definitions have been inserted for “the complainant”, “the Board” and “specified activity”.

Clause 3 amends rule 18 (“The sentence”)

Requires the disciplinary tribunal to obtain the opinion of the Board as to an appropriate sentence where there has been a breach of the 1997 and 2008 Acts by a respondent (ie a barrister, professional company, or registered associate). Also, the Tribunal may now impose, as a sentence, a restriction on some aspect of the practice of a respondent.

Clause 4 amends rule 20 (“Orders of disciplinary tribunals”)

Provides for the disciplinary tribunal to make an order restricting the practice areas of the respondent, including a restriction on transactions concerning specified activities.

Clause 5 amends rule 22 (“Report of finding and sentence”)

Requires a disciplinary tribunal to send a report of its finding, sentence and order to the Board, where the Board is the complainant.

Bar Professional Conduct Committee Amendment Rules 2018

Clause 1 (“Citation”) Clause 1 is self-explanatory.

Clause 2 amends rule 2 (“Application and interpretation”)

Amends the definition of “respondent” to include the Board as a complainant, and inserts a definition for “the Board”.

Clause 3 amends rule 3 (“Preliminary inquiry into complaints”)

Requires the Professional Conduct Committee (PCC) to notify the respondent that a complaint has been made to it by the Board.

Clause 4 amends rule 5 (“Investigation of meritorious complaints”)

Requires the PCC to inform a respondent where it has determined that there is some merit to a complaint made by the Board, and that the complaint has been referred to the Committee for investigation.

Clause 5 amends rule 9 (“Complainant to be kept informed of progress of investigation of complaint”)

Makes a correction to rule 9 so that it reads that a complaint has been made “by” a complainant instead of “against” a complainant”.

Clause 6 amends rule 10 (“Chief Justice to be informed of result of investigation”)

Requires the chairman of the PCC to inform the Board of the results of its inquiry or investigation into a complaint made by the Board.

Clause 7 amends rule 13 (“Chief Justice to transmit disciplinary charges and Convening Notice to respondent”)

Requires the Chief Justice to inform a respondent of the names of any witnesses which counsel for the Board intends to call to give evidence.

Barristers Code of Professional Conduct Amendment Rules 2018

Clause 1 (“Citation”)

Clause 1 is self-explanatory.

Clause 2 amends rule 2 (“Definitions”)

Inserts definitions for the Board, the 1974, 1997 and 2008 Acts, and the 2008 Regulations.

The 1974 Act means the Bermuda Bar Act 1974.

The 1997 Act means the Proceeds of Crime Act 1997.

The 2008 Act means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

The 2008 Regulations means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

Clause 3 amends rule 6 (“Duties”)

Requires all barristers to report to the Bar Council any convictions which may bring the legal profession into disrepute.

Clause 4 inserts rules 8A (“Duties under the 1997 Act”),

8B (“Duties under the 2008 Act”) and 8C (“Duties under the 2008 Regulations”)

Inserts rules 8A, 8B, and 8C which refer to certain duties required of barristers—

(a) under the 1997 Act, including the requirement to register with the FIA for the purpose of making disclosures under that Act, and making disclosures without tipping-off a client;

(b) under the 2008 Act, including the requirement to register with the Board under Part 4A of that Act, and failing to comply with Part 4A amounting to improper conducting;

(c) under the 2008 Regulations, including the requirement to terminate a business relationship with a client if a barrister is unable to conduct customer due diligence measures, and failing to comply with the 2008 Regulations amounting to improper conduct.

Bermuda Bar (Barristers and Accountants AML/ATF Board) Rules 2018

Clause 1 - Citation

Clause - Interpretation

Clause 3 – applies the Rules to all barristers, firms and professional companies in independent practice.

Clause 4 – provides for registration fees with the Board (in force date open)

Clause 5 – provides for registered firms to supply data in a standardised format (in force date open)

Clause 6 – prohibits participation in “specified activities” unless a “regulated professional firm”, requiring notice thereof to Board

Clause 7 – requires transfer of corporate service provider business

Clause 8 – provides for joint supervision with Bermuda Monetary Authority (and other supervisors) and requires transfer of any other regulated businesses e.g. trust service provider business.

Clause 9 – requires integration of Guidance Notes into professional practice

Clause 10 – Bar Council to be informed if Board cancel’s a firm’s registration – practising certificate of barrister/certificate of recognition of firm automatically invalid upon cancellation of registration with Board.

Clause 11 – Bar Council to be informed of warning notices issued by the Board

Clause 12 – Boated to prepare statistical reports for bar Council, CPA and Minister

Clause 13 – Board to publish a statement of principles relating to its processes respecting registered firms

Clause 14 – Board to operate internally according to formal published Operating Principles

Clause 15 – amendment of Operating Principles

Clause 16 – establishment of Mutual Assistance Committee between Board, Bar Council and CPA for reviewing rules and relations

Bermuda Bar (Practising Certificate) Amendment Rules 2018

Clause 1 (“Citation”)

Clause 1 is self-explanatory.

Clause 2 revokes and replaces rule 2 (“Interpretation”)

Inserts a definition for “fit and proper person certificate” (FPP Certificate).

Clause 3 amends rule 3 (“Application by barrister in Form 1 for practising certificate”)

Inserts a provision which requires a barrister who applies for a Practising Certificate to provide a FPP Certificate with his application, and for applications without a FPP Certificate to be invalid.

Clause 4 amends rule 5 (“Application by barrister in Form 3 for special practising certificate”)

Inserts a provision which requires a barrister who applies for a Special Practising Certificate to provide the equivalent of a FPP Certificate with his application, and for applications without a Certificate to be invalid.

Clause 5 amends Schedule

Amends the Application Form for a Practising Certificate (Form 1 of the Schedule) to require information concerning convictions, cautions, warnings, registration with the Board, and registration with the FIA for the purpose of making disclosures under the 1997 Act.

Chartered Professional Accountants of Bermuda Amendment Act 2018

Section 1 Citation

Section 2 inserts definition of “professional accountant” and expands definition of “public accountant”

Section 3 formalises Operating Principles of the Board

Section 4 adds SEA to the duties of the Supervisor

Section 5 restricts using words or initials chartered accountant, certified accountant or chartered professional accountant.

Section 6 no person to provide or offer to provide the services of a public accountant in Bermuda unless registered as a member of CPA.

Section 7 creates offences for breach

Chartered Professional Accountants of Bermuda Amendment By-Laws 2018

Clause 1 (“Citation”)

Clause 1 is self-explanatory.

Clause 2 amends by-law 2 (“Interpretation”)

Inserts definitions for the 1997 and 2008 Acts, the 2008 Regulations, the AML/ATF Board, the FIA, and fit and proper person certificate.

Clause 3 amends by-law 5 (“Admission of individual to membership”)

Requires an application for non-corporate membership in CPA Bermuda to be in the prescribed form, and accompanied with a Fit and Proper Person Certificate (FPP Certificate).

Clause 4 amends by-law 6 (“Admission of company to membership”)

Requires an application for corporate membership in CPA Bermuda to include proof that the company is registered with the AML/ATF Board, and registered with the FIA for the purpose of making disclosures under the 1997 Act.

Clause 5 amends by-law 7 (“Re-admission of former member to membership”)

Requires a former member who applies for re-admission to provide a FPP Certificate with his application; and for the CPA Board to have regard to an opinion by the AML/ATF Board when considering an application for re-admission.

Clause 6 amends by-law 15 (“Corporate member”)

Requires a corporate member to ensure at all times that the company is registered with the AML/ATF Board and with the FIA.

Clause 7 inserts by-laws 41A (“Duties relating to AML/ATF Board”)

Inserts by-law 41A which refers to various AML/ATF-related statutory obligations by members under the 1997 and 2008 Acts and the 2008 Regulations.

Clause 8 amends by-law 71 (“Charge by executive committee”)

Provides for the Executive Committee of CPA Bermuda to charge a member with having failed to maintain the good reputation of the profession if he contravenes the By-Laws or any rule of professional conduct; and for the Executive Committee to charge a member who has failed to comply with a requirement of section 5 or Part 4A of the 2008 Act, or with a requirement imposed by the AML/ATF Board in the performance of its functions under that Act.

Clause 9 amends by-law 73 (“Discipline committee”)

Provides for a disciplinary committee to consult with the AML/ATF Board where a complaint may result in a member’s admission being revoked, or the member being charged with failing to comply with a requirement of Part 4A of the 2008 Act.

Schedule 2

(Supervisory Framework)

2 AML/ATF Risk Based Supervisory Framework

2.1 AML/ATF Risk Based Supervisory Framework adopted by the AML/ATF Board

Introduction

The structure of the supervisory model plays a key role in the effectiveness of a country's AML/ATF regime. The following section outlines the approach taken by the Barristers and Accountants AML/ATF Board (the "Board") to its supervisory functions as the supervisory authority for the legal and accounting sectors in Bermuda. The approach is predicated on internationally recognized best practices in establishing AML/ATF supervisory functions. This document provides an overview of the advantages of a risk-based supervisory framework and describes the six-function model for Designated Non-Financial Businesses and Professions (DNFBP) supervision adopted by the Board. The Board's policies are then implemented by a professional Supervisor mandated to be employed by the Board under the Bermuda Bar Act 1974 and the Chartered Professional Accountants of Bermuda Act 1973. The Supervisor and her assistant(s) conduct day-to-day supervision and work together with the Board in giving full effect to the Proceeds of Crime (Anti-money Laundering and Anti-terrorism Financing Supervision and Enforcement) Act 2008, together with related regulations, as they relate to supervisory functions and sanctions using a risk-based approach.

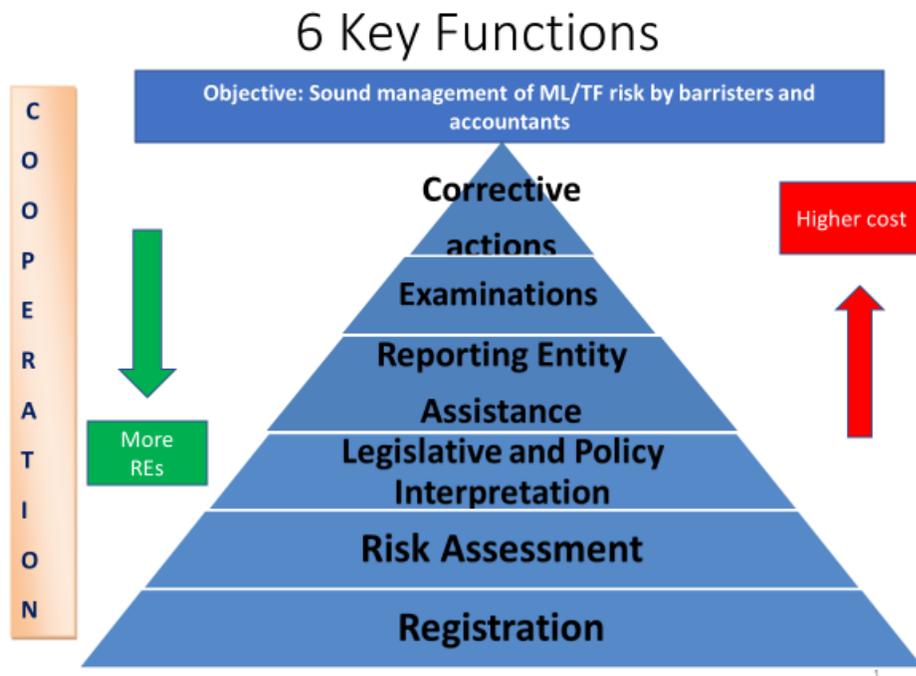
A risk-based supervisory approach is recognized as a best practice internationally. Recognizing that most supervisory agencies have limited resources, the risk based supervisory approach allows authorities to determine which supervisory activities are the most appropriate according to the risk of non-compliance, money laundering and terrorism financing that is present within a particular sector and respective reporting entities.

A risk based supervisory approach presents a number of strategic advantages. A risk-based approach to supervision aims to focus limited supervisory resources on the highest risk sectors and entities. This targeted approach aims to achieve the highest level of compliance with minimal allocation of resources. As discussed below lower risk entities are provided with educational material and training while inspection resources are focused on higher risk entities. When a comprehensive risk-based approach is applied it should result in the vast majority of entities being compliant with obligations and non-compliant entities being subject to inspections and corrective actions.

A risk-based approach should be integrated into all aspects of designing a supervisory framework. As the supervisory framework is developed, a risk-based approach should serve as the lens by which all supervisory functions are developed.

A progressive approach to supervision of the barristers and accountants sectors has been adopted, with activities progressing from education, to inspection and corrective action. The design of the supervisory

framework has been developed considering all tools or functions that will help achieve the highest level of compliance. Much attention is often dedicated to the inspection function to the detriment of other key elements that will help ensure high levels of compliance. In adopting a risk-based approach to supervision, the AML/ATF Board will allocate minimal resources to lower risk entities and reserve inspection and corrective action activities to those entities at higher risk of being non-compliant. With this approach in mind, the following diagram sets out the six key functions that form the basis of the risk based supervisory framework adopted by the Board.



Cooperation

Cooperation between supervisory agencies is essential to the establishment of an effective supervisory regime. Regardless of which supervisory authority is designated with responsibility for ensuring compliance with AML/ATF obligations, cooperation between supervisory agencies is critical to a well-functioning supervisory regime. As there are multiple AML/ATF supervisory bodies for financial institutions and DNFBPs in Bermuda, it is important to leverage the coordination mechanisms that have been established by way of bilateral memoranda of understanding to ensure that interpretations of the legislation and regulations are consistent across obligated sectors. The establishment of a Supervisory Forum under the chairmanship of the National Anti-Money Laundering Committee has been an opportunity for supervisors to share best practices and lessons learned with respect to ensuring compliance with AML/ATF obligations.

Licensing

Licensing and Professional Practice Rules ensure that entities undertaking specified activities have the necessary training and integrity to minimize the possibility that the sector is used for ML/TF purposes.

Membership of Chartered Professional Accountants Bermuda, (“CPA Bermuda”), is mandated by law for public accountants. All persons in Bermuda holding any one of a number of professional qualifications relating to public accountancy listed in the Chartered Professional Accountants of Bermuda Act 1973, must become members of the Chartered Professional Accountants of Bermuda, being the self-regulatory body (SRB) for the accounting profession on the Island. Because Bermuda, for professional accounting purposes, is part of CPA Canada, membership of CPA Bermuda requires first that the applicant be a member of either CPA Canada itself or of a foreign professional body that has been vetted and approved by CPA Canada as having standards equivalent to Canada regarding admission, education, examination and experience including the absence of a criminal record. In practical terms, when an accountant applies for membership in CPA Bermuda, CPA Bermuda contacts Canada or the relevant foreign professional body to determine if the applicant is in good standing. All members of CPA Bermuda therefore are subjected to admission standards equivalent to Canada.

The licensing of lawyers (barristers) is controlled at two levels which involve the Chief Justice of Bermuda and the Bermuda Bar Council. The Chief Justice of Bermuda enrolls barristers at the Supreme Court, in a process which requires production of an affidavit of good character, signed by the proposer of the barrister seeking enrolment as well as the applicant himself. The affidavit should disclose any prior criminal conviction. Unless the barrister is to be self-employed, the proposer will usually be a director of the law firm which is to employ the barrister. As a first filter for the Court, the proposer will satisfy himself of the veracity of the contents of the affidavit. Discovery of a false statement as to a criminal record would result in striking off from the Roll as well as being a disciplinary offence under the Barristers Code of Professional Conduct for both the proposer and the applicant. In circumstances where the Bar Council objects to an applicant being admitted to the Bar for whatever reasons, the ultimate decision on the admission of an applicant or refusal to admit, rests with the Chief Justice, who presides over the Call to the Bar proceedings.

The second level is the annual issuance of a practising certificate by Bar Council to an intending practitioner. The process for issuing a practicing certificate requires barristers to provide a statement that they are in compliance with the Barristers (Accounts and Records) Rules 1976 obligation to file an accountant’s report, proof of professional indemnity insurance and a fit and proper person certificate.

Barristers are also required to register annually with the AML/ATF Board. All law firms, including sole practitioners, must register annually with the Board and undergo an initial analysis as to whether they advise clients in relation to transactions involving specified activities. If not, a much-reduced level of reporting and supervision will apply. If there is a change of status, the Board must be notified immediately. If a firm does advise in relation to specified activities, it will be assessed on the risk-basis for the appropriate level of supervision.

Fit and proper person certification requirements have recently been introduced to prevent criminals from entering the professions or controlling or directing barrister or accountancy firms. The amendments to the Bermuda Bar Act and to the CPA Act and its Byelaws prohibit persons convicted of certain criminal offenses (among other things) from entering or remaining in the profession, or restrict them from assisting in the planning or execution or acting on behalf of a client during transactions related to a specified activity.

Risk Assessment

The Risk assessment function helps determine where supervisory resources should be attributed. The core of a risk based supervisory approach is the establishment of a risk assessment function responsible for evaluating the ML/TF and non-compliance risks associated with a Regulated Professional Firm (“RPF”). A sectoral risk assessment was conducted in 2017, in the context of the National Risk Assessment. The

results of the sectoral risk assessment are informing what supervisory activities should be undertaken and which broader category of firms should be targeted.

Developing risk matrices to evaluate the risk of individual obliged entities is the second step in adopting a comprehensive risk-based supervisory program. Once the sectoral risk assessment has been completed an analysis of which reporting entities are at highest risk must be undertaken. This risk assessment exercise is targeted at the specificities of the barristers and accountants' sectors. Initially, information to populate the risk matrices may be unavailable. Statistical return questionnaires provide one vehicle by which the Board is able to gather important compliance information while also raising awareness amongst reporting entities. Subjective data supplied by an RPF may be verified against objective data separately collected by the Board. Once information is completed the risk assessment of individual obliged entities can be undertaken. As with all risk assessments the evaluation of risk is continuously informed by publicly available information as well as desk-based inspections and on-site inspections.

The development of an Annual Supervisory Plan is informed by the sectoral and reporting entity risk assessments. The sectoral and reporting entity risk assessments inform the development of an Annual Supervisory Plan that details where reporting entity assistance and inspection resources will be attributed. Lower risk sectors and entities may only be subject to educational opportunities through the reporting entity assistance function and desk-based inspections where higher risk sectors and entities will see a heightened occurrence of inspections. The Annual Supervisory Plan outlines the specific desk-based inspections and on-site inspection plan for the year.

The effectiveness of the risk assessment model is evaluated continuously. Once the risk assessment model has been used to develop the Annual Supervisory Plan including the designation of inspection activities, an evaluation of the effectiveness of the risk assessment model is undertaken to determine whether the risk assessment tools developed are appropriate.

Reporting Entity Assistance

The reporting entity assistance function ensures that reporting entities are aware of their obligations. Awareness of obligations is the first step in achieving a high level of compliance from reporting entities. Awareness raising activities are often a cost-effective supervisory activity requiring less significant resource investments while reaching a much larger population base. The establishment of a reporting entity function ensures that resources dedicated to awareness raising activities are targeted and strategic.

Education tools such as guidance notes have been developed for both the legal and accounting sectors. The AML/ATF Board has developed sector specific guidance notes for barristers and accountants to assist them in complying with their AML/ATF obligations (the "Guidance Notes"). These are approved by the Minister of Legal Affairs and published on the Board's website. The Guidance Notes are relevant for legal purposes insofar as observance of the Guidance Notes may serve as a defense to proceedings for a breach of the AML/ATF Regulations. Prior to publication, the Guidance Notes were subject to consultation with industry representatives to determine the appropriateness of the guidance to the industry's needs. In

addition to the general guidance documents, the AML/ATF Board has delivered continuous training to enhance RPFs understanding of AML/ATF issues. Furthermore, a newsletter is published at appropriate intervals discussing emerging AML/ATF issues as well as the activities of the Board. The Supervisor also circulates informal correspondence from time to time so as to assist RPFs.

A mechanism for ensuring consistent policy interpretation has been established. The AML/ATF Board has established a mechanism to ensure that legislative and regulatory interpretations provided to regulated entities are consistent through all the reporting sectors. This involves a coordination mechanism for policy interpretation through the AML/ATF Supervisory Forum, and the Mutual Assistance Committee under the Bar/CPA Acts, to ensure consistent interpretation between AML/ATF supervisors and also within the regulated professions.

Consultation with regulated entities contributes to enhanced awareness. On-going consultations with industry play a key role in ensuring that RPFs are aware and understand the importance of complying with obligations. It is also an opportunity to gain a better understanding of industry operations and activities. It also provides industry with an opportunity to offer constructive feedback on how to more effectively implement AML/ATF obligations in their respective sectors.

Desk-Based Inspections and On-Site Inspection

Desk-based inspections and on-site inspection activities are risk-based. Once RPFs are aware of their obligations, inspection activities are undertaken to determine whether obligations are being complied with. Monitoring and inspection activities are focused on medium and high-risk entities that may require additional incentives to comply. As mentioned earlier, the inspection plan is developed based on the sectoral and RPF risk assessment. Random inspections are also conducted to provide a baseline for comparison and to ensure that completed risk assessments are effective.

Desk-based inspections are an essential component of a risk-based supervisory framework. Desk-based inspections are the first step in understanding an RPF's activities and allows the Supervisor to make a determination as to whether an on-site inspection is required. By conducting a desk-based inspection the Supervisor can determine whether the level of compliance is acceptable or whether the conduct of an on-site inspection is warranted. The desk-based inspection is also an important tool used to validate and inform the results of both sectoral and obliged entity risk assessments.

The conduct of on-site inspections is determined by the results of the sectoral and Regulated Professional Firm risk assessment as well as the results of the desk-based inspection. Given the resource investment involved in inspections, authorities can minimize the number of inspections conducted in low risk entities (other than random inspections) and reserve on-site inspections for those entities at greatest risk of ML/TF and non-compliance. The sectoral and RPF risk assessment can also assist in targeting the scope of on-site inspections focusing on those obligations where there is a higher level of risk or non-compliance. If risk assessments are accurate on-site inspection results for high risk should identify a

greater number of deficiencies than for lower and medium risk entities. This is where random inspections and objective sectoral data collection play a key role in providing a baseline for comparison where random inspections should result in fewer deficiencies than in high risk entities. The tracking of inspection results and the analysis of objective sectoral data thus becomes extremely important in order to measure the effectiveness of risk assessments and subsequently corrective action activities.

Inspection policies and procedures have been developed and documented in a Supervisory Manual. Inspection policies and procedures play an important role in ensuring that the Supervisor and her assistant(s) adopt a consistent approach to inspections reducing the possibilities that inspection findings will be challenged. Policies and procedures are documented in the AML/ATF Board's Supervisory Manual used for each inspection by the Supervisor and her assistant(s) to ensure that this consistency in approach is achieved.

Inspection trends will be identified. Inspection findings and objective data collected from all firms registered with the Board will be tracked to allow for the identification of compliance trends. These trends can inform both risk assessment activities as well as the reporting entity assistance function by identifying areas of weakness that would benefit from additional educational attention. As trends are identified, strategies to address common deficiencies are developed.

Corrective Action

The AML/ATF Board considers a number of corrective actions when addressing non-compliant behaviour. Following an inspection, the Supervisor must consider what steps should be undertaken when deficiencies have been identified. A spectrum of corrective actions is in place to address various degrees and severity of non-compliance. These include the requirement to produce a compliance action plan, the ability of Supervisors to mandate the correction of deficiencies and the application of sanctions whether by the Board itself or through the medium of the disciplinary committees of the respective professional bodies (Bar/CPA).

Policies and procedures regarding corrective actions are included in the Supervisory Manual. Consistency in application of corrective actions is crucial, particularly with respect to the application of sanctions. Also, it is important to provide guidelines for the Board to consider with respect to what corrective action is appropriate in what situation, considering the resource implication of each option. More specifically, given the resource intensiveness that is associated with the application of some corrective actions, particularly sanctions, it is important that most effective and least resource intensive corrective action is applied. Policies and procedures will help achieve this. They can be found in Chapters 10 and 11 of the Supervisory Manual.

The effectiveness of corrective actions should be evaluated over the medium term. The impact of corrective actions on the compliance behaviour of RPFs is a key measure of a supervisory program's effectiveness. The application of the proper corrective action should result in increased compliance with obligations. The tracking of inspection findings and corrective actions as well as the conduct of re-

inspections of entities where sanctions have been applied, will be essential to determining whether corrective actions activities are effective. This evaluation will be in the medium term. The collection of inspection findings, corrective actions and re-inspection results will be collected at the initial stages of implementation to provide the necessary data to conduct an effectiveness analysis.

2.2 Supervisory Cycle

This supervisory manual describes the activities that the AML/ATF Board will undertake as part of its risk based supervisory framework. The diagram below outlines the key activities that define the Board’s supervisory cycle.



The activities listed above correspond to the risk assessment, inspection and corrective action functions outlined in the supervisory framework outlined in Section 2.1.

The supervisory cycle begins with RPFs completing a statistical survey that gathers information on the firms’ activities to identify areas of potential ML/TF risk (See Appendix 1). The information is entered in the AML/ATF Board’s risk matrix which calculates the firms’ ML/TF (inherent) risk, the firms’ non-compliance risk as well as the firms’ overall residual risk. These activities are described in further detail in Chapter 4 on risk assessment.

Based on the results of the AML/ATF Board’s risk assessment, the supervisor identifies who should be subject to a desk-based review. Focus is placed on those entities with higher ML/TF or residual risk. Once an entity is selected the Supervisor undertakes a desk-based inspection which reviews the firm’s AML/ATF policies and procedures, its self-risk assessment as well as its AML/ATF internal audit or review. Procedures for the desk-based review are outlined in Chapter 6 and Appendix 2.

Based on the review of the statistical return and the desk-based inspection the RPF's risk profile is updated. The supervisor makes a recommendation on whether the RPF should be subject to an on-site inspection based on the risks identified in the risk profile. If an on-site inspection proceeds, the supervisor will focus the scope of the inspection on the clients and activities that have been determined as higher risk for the firm. The planning of the on-site inspection including the updating of the RPF's risk profile and the definition of the inspection action plan is outlined in Chapter 7 and Appendices 3 and 4.

The on-site inspection is conducted based on the scope outlined in the inspection action plan. An on-site inspection checklist is used (Appendix 6) to ascertain the firm's compliance with AML/ATF obligations. A customer due diligence checklist (Appendix 7) is used to ensure that the firm is complying with CDD and record keeping requirements. Detailed on-site inspection procedures are outlined in Chapter 8.

Once the on-site inspection is completed the supervisor will determine whether deficiencies with AML/ATF obligations have been identified. The deficiencies identified are communicated to the RPF and a findings letter is issued. The reporting of inspection findings is outlined in Chapter 9.

If deficiencies have been identified, the RPF will be asked to develop and implement an action plan to address the identified deficiencies. Once the action plan is implemented, the supervisor will follow-up to ensure that the measures adopted have adequately addressed the identified deficiencies. Chapter 10 outlines the process to address non-compliance. The supervisor will also make a recommendation to the AML/ATF Board on whether civil penalties or other enforcement measures should be implemented as outlined in Chapter 11.

At the end of the supervisory cycle, the RPF's risk profile and the AML/ATF Board's risk matrix is updated to inform future supervisory decision making.

2.3 Cooperative Approach

The AML/ATF Board should favour a cooperative, "no surprises" approach to ensuring compliance. It is believed that most RPF are making a sincere effort to comply with their AML/ATF obligations. Supervisors' actions must reflect this approach when conducting inspections.

The AML/ATF Board should be committed to working constructively with RPFs to make sure they understand their obligations and to help them comply. In addition, compliance program personnel may periodically provide RPFs with feedback about the adequacy, completeness and timeliness of the information that RPFs report.

When compliance issues are identified, compliance program personnel should work with a firm to find reasonable solutions. If these efforts are still not successful, or if the firm continues to be in non-compliance, the AML/ATF Board may apply civil or criminal penalties (see Chapter 10).

Schedule 3

(Sample Registration Form and Annex)

Application for Registration/Renewal of Registration pursuant to Section 30C(1) of the Proceeds of Crime (Anti-money Laundering and Anti-terrorist Financing Supervision and Enforcement) Act 2008 ("SEA")

All lawyers and accountants in independent practice are now required (as of October 2018) by Section 30C(1) to register with the Board. Registration must be renewed annually, before the end of January in each year. After registration, firms will be assessed as to whether they fall to be supervised as "regulated professional firms" for the purposes of SEA. Please see the Board's Information Bulletin, Issue 001/2018 dated 26 November 2018 for further guidance on how to complete this form.

Registration requires the completion of this form, supported by:

- 1) An organizational chart, showing the law or accounting practice ("professional firm"), together all its owners, controllers, subsidiaries and affiliates (whether or not resident in Bermuda);
- 2) A list of partners and directors of all entities in (1) above (whether or not resident in Bermuda);
- 3) A list of senior executives in the professional firm (whether or not resident in Bermuda), being per section 11B(4) of SEA such persons who, under the immediate authority of a director or chief executive of the professional firm —
 - i. exercises managerial functions; or
 - ii. is responsible for maintaining accounts or other records;
- 4) A Spreadsheet or Table in the form of Annex 1 of all files opened by the Professional Firm in the 6 (six) months preceding the date of application for registration; and
- 5) Payment of the requisite fee.
 - (a) The fees for Registration are:
 - i. Initial: \$250
 - ii. Annual: \$150
 - iii. Fit and Proper Person Certification: \$100 per the individuals named pursuant to (1), (2) and (3) above. [See Annex 3 to this document for the requirements of the 'Fit and Proper Person Certification'].

How to fill in this form:

- If you fill in this form by hand, please write clearly in black ink and use capital letters.
- If you need general advice, telephone the Board on 296-5577.
- If there is not enough space for you to give a reply to any of the questions, please give additional information on a separate **sheet**. Use the space provided for your answer to let us know this is what you have done.
- When you have **filled in** and signed the form, please send it to the Barristers & Accountants AML/ATF Board Office via email: assistant@amlatfboard.bm; or mail to Boyle Building (2nd Floor), 31 Queen Street, Hamilton HM 12.

- Cheques are payable to the Barristers and Accountants AML/ATF Board

For official use only

Reference

| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|
| | | | | | | | | | |
|--|--|--|--|--|--|--|--|--|--|

Number

Amount

| | | | | | | | | | | | | |
|----|--|--|--|--|--|--|--|--|--|---|---|---|
| \$ | | | | | | | | | | . | 0 | 0 |
|----|--|--|--|--|--|--|--|--|--|---|---|---|

received

Name of Firm

| |
|--|
| |
|--|

Section A- Principal contact and position

Applicant

| |
|--|
| |
|--|

A.1 Surname

| |
|--|
| |
|--|

A.2 First Name(s) *Do not use initials*

| |
|--|
| |
|--|

A.3 Position held

| |
|--|
| |
|--|

Section B-Business contact details

B.1 is the business a Bermuda registered business; if so please give registration number

| | | | | | | | | |
|--|--|--|--|--|--|--|--|--|
| | | | | | | | | |
|--|--|--|--|--|--|--|--|--|

B.2 Business name and trading name if different

| |
|--|
| |
|--|

B. 3 Business address, that is, the principal place where most of the day-to-day running of the business is carried out and any other address from which you intend to carry on that business

| |
|--|
| |
|--|

B. 4 Business telephone number

| |
|--|
| |
|--|

B. 5 Business contact mobile telephone number

| |
|--|
| |
|--|

B. 6 Business e-mail address

| |
|--|
| |
|--|

B. 7 Business website address

| |
|--|
| |
|--|

B. 8 Address for correspondence *if different from question B.3*

| |
|--|
| |
|--|

B. 9 Registered office address

| |
|--|
| |
|--|

Section C-Details of Money Laundering Reporting Officer

C. 1 Surname

C.2 First name(s) *Do not use initials*

C. 3 Contact telephone number

C.4 Email address

C.5 Contact address *if different from question B.3*

If additional space is needed, please use the pages supplied at the end of the document.

Section D- Regulated Activities

D.1 What type of business are you registering?

Law firm in independent practice (including sole proprietor)

Accountant in independent practice (including sole proprietor)

D.2 Please provide a full description of the nature of your business and activities, consistent at a minimum with any services advertised in your publicity material.

Please provide a Spreadsheet or Table of all professional files opened during the 6 months preceding this application in the format shown in Annex 1 of this Application and by reference to the below classifications of “specified activities” provided in section 49(5) of the Proceeds of crime Act 1997 (“POCA”). A non-exhaustive list of possible Transaction Descriptions is provided in Annex 2.

For firms registered and regulated before 20 October 2018, Annex 1 need not be completed for the year 2019. In lieu of Annex 1, please state in the Box provided below or by separate attachment what files you have opened during the preceding 6 months fitting the descriptions set out in Annex 2. It will be sufficient simply to tick along the list in Annex 2, ideally with an indication of the number of such files. By doing so, you acknowledge your firm is to be designated as a Regulated Professional Firm. If no Annex 2 statement is provided, or you indicate that Annex 2 is not applicable, please provide a Table conforming to Annex 1.

POCA Section 49(5) "specified activities"

- (a) Buying and selling real property
- (b) Managing client monies, securities and other assets
- (c) Management of bank, savings or securities accounts
- (d) Organization of contributions for the creation, operation or management of companies
- (e) Creation, operation or management of legal persons or arrangements, and buying and selling business entities
- (f) N/A

D.3 Please state:

Number of employees:

Name and contact details of Compliance officer:

Name and contact details of Money Laundering Reporting Officer:

Name and contact details of Partner/Director responsible for AML/ATF Matters:

D. 4 Please provide a full organizational chart for the applicant showing the full names, addresses, dates of birth and nationalities:

- (a) Directors
- (b) Controllers
- (c) Senior Executives

(as defined in Section 11B of SEA); and

- (d) All bodies corporate, partnerships or any other type of entity, whether in Bermuda or outside Bermuda, with which the Applicant is in common ownership or control, or in respect of which the Applicant operates common standards e.g. (without limitation) brand licensing

or franchise agreement. In the event a person (whether natural or legal) mentioned in (b) gives instructions in accordance with which the Applicant is accustomed to act, and such person is not mentioned in (a) above, then such person must be disclosed here.

If supplying additional documents for the completion of this section of the form, please list the documents provided on page 7 of this application (Additional Information – Section D) and then attach the requisite documents to your completed application.

Section E-Declaration

This section must be completed by:

- the sole proprietor of the business;
- a partner;
- a director or the company secretary; or
- an authorized signatory of a corporate body.

I declare that:

- To the best of my knowledge and belief all the information I have given in this application is correct;
- I understand that non-compliance with the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and its related legislation and regulations may be met with criminal prosecution and or civil penalties.

Surname

First name(s) *Do not use initials*

Signature

Date (DD MM YYYY)

Your position in the company

I enclose a fee for registration of

| | | | | | | | | | | | | |
|----|--|--|--|--|--|--|--|--|--|---|---|---|
| \$ | | | | | | | | | | . | 0 | 0 |
|----|--|--|--|--|--|--|--|--|--|---|---|---|

The Board may seek to verify the information in this form.

Additional information- section D

A large, empty rectangular box with a thin black border, occupying most of the page. It is intended for providing additional information related to section D.

Annex 1 – Sample Professional Files Declaration

| | Client Type ² | Service Type ³ | Product Type ⁴ | Transaction Type ⁵ | Transaction Description ⁶ | POCA S49(5) Classification ⁷ | Source of Instructions ⁸ | Client Location ⁹ | Transaction Location ¹⁰ |
|---|--------------------------|---------------------------|---------------------------|-------------------------------|--------------------------------------|--|-------------------------------------|------------------------------|------------------------------------|
| A | Body Corporate | Advisory | Capital Markets | Financial | Initial Public Offering | organisation of contributions for the creation, operation or management of companies ¹¹ | Via New York law firm | Bermuda company | New York |
| B | Natural person | Advisory | Debt recovery | Real estate | Recovery of Rent Arrears | managing of client monies, securities and other assets ¹² ; | Direct from client | Bermuda | Bermuda |
| C | Body Corporate | Advocacy | Liquidations | Financial | Application to Court for | managing of client monies, | Via Liquidator | Bermuda | Bermuda |

¹ Description of Client e.g. natural person, body corporate, trustee, public authority (disclosing whether such client is a Politically Exposed Person for the purposes of Regulations 5, 6 and 6A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (“Client”).

² Description of Service provided: (a) advocacy before any court or tribunal; or, (b) advisory, whether as to rights, obligations, procedures, structures or otherwise; or, (c) office holder e.g. liquidator, receiver, administrator, mediator, power of attorney; nominee.

³ Description of Product offered by Firm to Client i.e. practice group such as Funds, Insurance, Capital Markets, Debt Recovery, Liquidations

⁵ Nature of Transaction contemplated by Client: (a) financial i.e. any change in the client’s status having value in money or money’s worth; or (b) real estate i.e. going to the acquisition, ownership or management of any interest in real property; or, (c) non-transactional/not applicable.

⁶ Description of Transaction: provide a file name or matter type using the terminology provided in the Annex, or, if none provided, a short statement of the work done on the file

⁷ Classification of Client Activity: state which of the Classes set out in POCA Section 49(5) the Client Transaction falls under, if any:

- o buying and selling real property;
- o managing of client monies, securities and other assets;
- o management of bank, savings or securities accounts;
- o organisation of contributions for the creation, operation or management of companies;
- o creation, operation or management of legal persons or arrangements, and
- o buying and selling business entities.

Refer to the Registration Form Annex 2 in Schedule 3 and the FATF Report for guidance.

⁸ State whether the Client instructed the Firm directly or whether instructions came via an intermediary

⁹ State Country of Residence of Client

¹⁰ State situs of the Client Transaction

¹¹ The Client company is raising funds (contributions) for its operation.

¹² The Client individual is managing a real estate asset and seeking a transfer of funds (rent).

| | | | | | | | | | |
|---|----------------|---------------|----------------------|---------------------|---|---|--------------------|---------|---------|
| | | | | | Winding-up order | securities and other assets ¹³ ; | | | |
| D | Natural person | Advocacy | Matrimonial | Divorce Proceedings | Application for Child Custody | Not applicable | Direct from Client | Bermuda | Canada |
| E | Body Corporate | Office Holder | Company & Commercial | Financial | Acting as receiver on behalf of Bank - Sale of Business in Receivership | managing of client monies, securities and other assets/selling a business ¹⁴ | Direct from Client | Bermuda | Bermuda |

¹³ The Client company in liquidation is managing its money and assets by way of distribution.

¹⁴ The Client creditor is realising on security by selling a debtor's business.

Annex 2 – Transaction Descriptions (non-exhaustive)

Matter Types and Activities

(for extended definition of the matter types set out below, refer to the glossary published by the Financial Action Task Force: <http://www.fatf-gafi.org/glossary/>)

(for interpretation of specified activities, refer to Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals, published by FATF:

<http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>

- (a) buying and selling real property, including:
 - (i) mortgage advice;
 - (ii) arranging finance;
 - (iii) introducing client to financial institutions or other professionals;
- (b) managing of client monies, whether through a client account or otherwise, and including:
 - (i) cash, vouchers, cryptocurrencies or equivalents;
 - (ii) bearer cheques;
 - (iii) debt recovery;
 - (iv) structuring payments or purchases of any kind;
 - (v) assisting in obtaining financial services or loans;
- (c) managing of securities, including:
 - (i) issuing, buying, selling or repurchasing stocks, shares, bonds or any other security;
 - (ii) brokerage or agency services;
 - (iii) nominee arrangements;
- (d) managing assets, including:
 - (i) tax advice;
 - (ii) devising ownership structures;
 - (iii) administration of deceased estates;
 - (iv) insolvency services;
 - (v) receiving and holding client monies or assets in a client account;

- (vi) nominee arrangements;
- (vii) buying or selling businesses;
- (viii) managing real estate, leases and rents;
- (ix) managing high value items such as yachts and aircraft;
- (e) management of bank, savings or securities accounts, including:
 - (i) opening accounts;
 - (ii) making introductions to financial institutions;
 - (iii) coordinating several bank accounts;
 - (iv) powers of attorney;
 - (v) acting as a signatory;
 - (vi) nominee arrangements;
- (f) organisation of contributions for the creation, operation or management of companies, including:
 - (i) share offerings and transfers;
 - (ii) subscriptions;
 - (iii) contributions to capital of any kind;
 - (iv) acquisitions and mergers of companies;
 - (v) bye-laws;
 - (vi) shareholder agreements;
 - (vii) director services;
 - (viii) registered office;
 - (ix) corporate secretarial services;
 - (x) nominee arrangements;
 - (xi) powers of attorney;
 - (xii) management services of any kind;
 - (xiii) introductions to financial institutions;
 - (xiv) insolvency services;

but excluding any such service which may be provided solely by any separate legal person which may be affiliated with the Applicant and which is duly licensed under the Corporate Services Provider Business Act 2012;
- (g) creation of legal persons or arrangements, including:
 - (i) the settlement of trusts, unit trusts or investment funds and pooling arrangements of any kind;

- (ii) formation of partnerships of any kind;
- (iii) joint ventures;
- (iv) complex structures of any kind;
- (v) setting up charities;
- (h) operation of legal persons or arrangements, including:
 - (i) acting as a trustee;
 - (ii) managing a trust;
 - (iii) managing a partnership;
 - (iv) managing or co-ordinating a joint-venture;
 - (v) managing a charity;
 - (vi) powers of attorney;
 - (vii) dealings with or on behalf of trust beneficiaries;
 - (viii) dealings with or on behalf of partners or joint venturers;
 - (ix) trust disputes and enforcement;
 - (x) partnership disputes and enforcement;
 - (xi) joint venture disputes and enforcement;
 - (xii) insolvency services;

but excluding any such service which may be provided solely by any separate legal person which may be affiliated with the Applicant and which is duly licensed under the Trusts (Regulation of Trust Business) Act 2001.

Annex 3 – Fit and Proper Person Certification

Fit and Proper Person Certificate Application Form

This form must be completed for **each person** who is an owner, controller, director or senior executive of a professional firm registered with the Barristers & Accountants AML/ATF Board.

Function: *owner/controller/director/senior executive*

Actual Title: _____

Last Name: _____

First Name: _____

Middle Names: _____

Date of Birth: _____

Gender: _____

Place of Birth: _____

Nationality: _____

Prior nationalities (if any): _____

Current Residential Address: _____

Contact telephone: _____

Email: _____

All Residential Addresses in the Preceding 10 years (with dates of residency):

Jurisdiction(s) of Professional certification or call: _____

Issuing authority of professional qualifications: _____

Has the Applicant been convicted by a court of a criminal offence –

- i. for which the person received a custodial or suspended sentence;
- ii. involving dishonesty, fraud, perjury or bribery;
- iii. associated with obstructing the course of justice;
- iv. associated with money-laundering or terrorism;

Yes/No: If yes, provide full details (date, place, nature of offence, sentence etc.)

Has the Applicant received a police caution for any of the matters referred to above and does such caution amount to an admission of guilt.

Yes/No: If yes, provide full details (date, place, nature of offence, details of caution etc.)

Schedule 4

(Sample Statement of Files Opened)

| | Client Type ¹ | Service Type ² | Product Type ³ | Transaction Type ⁴ | Transaction Description ⁵ | POCA S49(5) Classification ⁶ | Source of Instructions ⁷ | Client Location ⁸ | Transaction Location ⁹ |
|---|--------------------------|---------------------------|---------------------------|-------------------------------|--------------------------------------|--|-------------------------------------|------------------------------|-----------------------------------|
| A | Body Corporate | Advisory | Capital Markets | Financial | Initial Public Offering | organisation of contributions for the creation, operation or management of companies ¹⁰ | Via New York law firm | Bermuda company | New York |

¹ Description of Client e.g. natural person, body corporate, trustee, public authority (disclosing whether such client is a Politically Exposed Person for the purposes of Regulations 5, 6 and 6A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 ("Client").

² Description of Service provided: (a) advocacy before any court or tribunal; or, (b) advisory, whether as to rights, obligations, procedures, structures or otherwise; or, (c) office holder e.g. liquidator, receiver, administrator, mediator, power of attorney; nominee.

³ Description of Product offered by Firm to Client i.e. practice group such as Funds, Insurance, Capital Markets, Debt Recovery, Liquidations

⁴ Nature of Transaction contemplated by Client: (a) financial i.e. any change in the client's status having value in money or money's worth; or (b) real estate i.e. going to the acquisition, ownership or management of any interest in real property; or, (c) non-transactional/not applicable.

⁵ Description of Transaction: provide a file name or matter type using the terminology provided in the Annex, or, if none provided, a short statement of the work done on the file

⁶ Classification of Client Activity: state which of the Classes set out in POCA Section 49(5) the Client Transaction falls under, if any:

- o buying and selling real property;
- o managing of client monies, securities and other assets;
- o management of bank, savings or securities accounts;
- o organisation of contributions for the creation, operation or management of companies;
- o creation, operation or management of legal persons or arrangements, and
- o buying and selling business entities.

Refer to the Registration Form Annex 2 in Schedule 3 and the FATF Report for guidance.

⁷ State whether the Client instructed the Firm directly or whether instructions came via an intermediary

⁸ State Country of Residence of Client

⁹ State situs of the Client Transaction

¹⁰ The Client company is raising funds (contributions) for its operation.

| | | | | | | | | | |
|---|----------------|---------------|----------------------|---------------------|---|---|--------------------|---------|---------|
| B | Natural person | Advisory | Debt recovery | Real estate | Recovery of Rent Arrears | managing of client monies, securities and other assets ¹¹ ; | Direct from client | Bermuda | Bermuda |
| C | Body Corporate | Advocacy | Liquidations | Financial | Application to Court for Winding-up order | managing of client monies, securities and other assets ¹² ; | Via Liquidator | Bermuda | Bermuda |
| D | Natural person | Advocacy | Matrimonial | Divorce Proceedings | Application for Child Custody | Not applicable | Direct from Client | Bermuda | Canada |
| E | Body Corporate | Office Holder | Company & Commercial | Financial | Acting as receiver on behalf of Bank - Sale of Business in Receivership | managing of client monies, securities and other assets/selling a business ¹³ | Direct from Client | Bermuda | Bermuda |

¹¹ The Client individual is managing a real estate asset and seeking a transfer of funds (rent).

¹² The Client company in liquidation is managing its money and assets by way of distribution.

¹³ The Client creditor is realising on security by selling a debtor's business.

Schedule 5

Fit and Proper Person Certificate

Application Form

(to be completed for **each person** who is an owner, controller, director or senior executive of a professional firm registered with the Barristers & Accountants AML/ATF Board)

Function: owner/controller/director/senior executive

Actual Title: _____

Last Name: _____

First Name: _____

Middle Names: _____

Date of Birth: _____

Gender: _____

Place of Birth: _____

Nationality: _____

Prior nationalities (if any): _____

Current Residential Address: _____

Contact telephone: _____

Email: _____

All Residential Addresses in the Preceding 10 years (with dates of residency):

Jurisdiction(s) of Professional certification or call: _____

Issuing authority of professional qualifications: _____

Has the Applicant been convicted by a court of a criminal offence –

- i. for which the person received a custodial or suspended sentence;
- ii. involving dishonesty, fraud, perjury or bribery;
- iii. associated with obstructing the course of justice;
- iv. associated with money-laundering or terrorism;

Yes/No: If yes, provide full details (date, place, nature of offence, sentence etc.)

Has the Applicant received a police caution for any of the matters referred to above and does such caution amount to an admission of guilt.

Yes/No: If yes, provide full details (date, place, nature of offence, details of caution etc.)
