

19 June 2020

Report of the activities of the Barristers & Accountants AML/ATF Board (the “Board”) for the year ending 31st March 2020

This report is published in accordance with Section 5(3)(b) of the Proceeds of Crime (Anti-money Laundering and Anti-terrorist Financing Supervision and Enforcement) Act 2008 (the “Act) for the calendar year ending 31st March 2020.

Summary

The most significant event of the preceding year is the successful conclusion of the Financial Action Task Force Mutual Evaluation Report (“MER”). This process culminated in a plenary session in Antigua attended by the Supervisor, Kim Wilson. Bermuda overall was awarded the top position worldwide for technical compliance and was among the top ten for effectiveness of supervision. That success embraced the reforms made to the rules and regulations governing the legal and accounting professions referred to in the Board’s reports from preceding years. Those modernised rules cover entry and exit to the professions with requirement for a Fit and Proper Person certification, extended rules for compliance with AML/ATF supervisory directions, emphasised training, and required the ring-fencing of corporate administrative business (which is higher risk), among other things. The MER, in accepting without comment the Board’s new risk-based technical regime, implicitly therefore recognises that the Board meets the technical standards expected by FATF.

As to effectiveness, general observations applicable to all Bermuda’s supervisors in the non-financial sector were made in the MER report. They had the following nature: supervised entities to conduct self-risk analysis; focus on the filing of suspicious activity reports; supervised entities regularly to check their risk methodologies; supervisory understanding of sectoral risk; adequate staffing; training. The Board has already implemented procedures for all these items. In particular, the Board fully revised its supervisory framework and hired additional staff to support the Supervisor.

The next challenge for the Board will be the processing of the 77 entities which registered or re-registered with the Board in January 2020. This represents a substantial increase in numbers, up from the original 28. The increase is a result of the change in legislation which requires all firms to register and thereafter be assessed by the Board itself whether they are to be actively regulated on the basis of their participation in the “specified activities” referred to in the Act. All firms were required to re-register on the same basis and the transitional year (2018/2019) distinction between previously registered firms and new registrants was no longer applicable. Thus, all firms were required to supply transaction analyses for the preceding 6 months (counted as the last financial month-end preceding the date of registration).

The Board will then assign risk-ratings to each regulated firm and develop a specific supervisory plan for that firm using a risk-based approach. Thus, the Supervisor will be calling for mitigation and risk data analyses, together with internal audits. All firms newly registered in 2020 would need to supply copies of

their policies and procedures. The Supervisor anticipates a great deal of active engagement with registered firms.

To assist in this exercise, the Board commissioned development of an online Portal and database whereby firms can register online and manage their data. This is an essential tool in gathering the transactional information necessary in determining whether a firm participates in specified activities and thereafter to manage the flow of information regarding supervisory activities. In this regard a number of Town Hall meetings with the professions were held and both Bar Council and CPA Bermuda established working groups to assist with the taxonomies to be used in the project.

The ramping up of the Board's operations to meet FATF standards has substantially increased both its supervisory reach and its operating costs, with consequential administrative and financial burdens on registered entities. However, Bermuda as a whole benefits from its international reputation and consequently businesses operating within Bermuda likewise benefit.

During the past year a number of the Members of the Board retired and new Members were appointed.

Looking forward to the rest of 2020, NAMLC will be organising the triennial round of National Risk Assessments, both for money-laundering and also terrorist financing. The Board, together with representatives of the legal and accounting sectors will participate actively in that. NAMLC proposes to stage two national risk assessments in 2020, with the shift in focus being on terrorist financing. Deriving from FATF policy, there would also be emphasis in such NRAs on the supervision of DNFPBs (designated non-financial professions or businesses). The assessment will use a different tool, not the World Bank tool as was employed for the 2017 National Risk Assessment.

Cooperation with NAMLC in coordinating supervisory activity in Bermuda is a priority for the Board. In that regard, the Board has worked and continues to work closely with the Bermuda Monetary Authority, particularly in relation to law/accounting firms in common ownership with corporate service providers as that area is the higher risk.

The Board also works closely with the professional bodies which govern the legal and accounting professions. Under the aegis of a Mutual Assistance Committee established under the Bar Rules, the Board meets quarterly with Bar Council and CPA Bermuda to discuss important matters relating to the Board's work. For example, coordination of the fit and proper person certification process with the practicing certificate process, and also to relay key supervisory information to the professions. Key proposals for the coming year include the use of SEA Section 37 Regulations for certain Board matters rather than make amendments to the Bar and CPA Acts.

One particular issue will be the quickness with which sanctions notices are distributed. It is intended that Bar and CPA become active in ensuring their members monitor the notices. Each registered firm, whether designated as a regulated Professional Firm or not, is required to have a sanctions policy.



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Finally, the Board expects 2020 to be an exceptionally busy and demanding year, compounded by the difficulties of the Covid pandemic. Firms will be given the opportunity to test the new Portal system before renewals in January 2021 and, it is hoped, following years will be considerably easier. It is also hoped that the new system, in addition to assisting the Supervisor with regulatory functions, will also serve registered firms in their good practice management by providing reports and analyses of their service offerings and underlying client activities.

Warren Cabral
Chairman