

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Bermuda: AML

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Patrick Devine, Conyers



Member of the Financial Action Task Force? No (Member CFATF).

On FATF blacklist? No.

Member of Egmont? Yes.

Anti-Money Laundering background — overview of country risks

Bermuda is a leading international financial centre and maintains a comprehensive body of primary legislation relating to money laundering and terrorist financing, supported by a range of general and sector specific (insurers, lawyers accountants, amongst others) Guidance Notes issued by the Bermuda Monetary Authority (BMA).

The legislation and Guidance Notes together comprise a comprehensive code aimed at the prevention, discouragement, detection and prosecution of money-laundering and terrorist financing related offences in Bermuda.

Key directives/legislative framework

The central framework for Bermuda's anti-money laundering (AML) and anti-terrorist financing (ATF) regime is comprised of The Proceeds of Crime Act 1997 (as amended) (the Act), the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (the Regulations), the Anti-Terrorism (Financial and Other Measures) Act 2004 (as amended) (the ATF Act), the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (as amended) (the SE Act) and the Financial Intelligence Agency Act 2007 (as amended) (the FIA Act).

This legislation is supported by a range of additional legislation, including the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Designation Order 2012, the Anti-Terrorism (Financial and Other Measures) (Business in Regulated Sector) Order 2008 and the Charities (Anti-Money Laundering, Anti-Terrorist Financing and Reporting) Regulations 2014.

The Act is primarily aimed at preventing offences relating to the proceeds of drug trafficking, serious crimes and other defined money laundering activities in Bermuda. In addition to creating offences relating to money laundering (or the giving of assistance in such activities), the Act also confers expansive information gathering powers on the police relating to investigations into drug trafficking and whether a person has benefited from criminal conduct.

Pursuant to these powers, a police officer may apply to the Courts for a production order, a search warrant, a disclosure of information by a Government Department order, a monitoring order or a customer information order. The Act also contains provisions empowering the Court to make confiscation orders, forfeiture orders and freezing orders and to impose other penalties with respect to the proceeds of crime and permits the enforcement of foreign confiscation orders in certain circumstances.

The ATF Act deals specifically with the financing of terrorism, complimenting the broader anti-money laundering Legislation. (Similarly, the Misuse of Drugs Act 1972 focuses specifically on curbing the financing of drug trafficking). In addition to establishing a series of offences relating to involvement in arrangements for facilitating, raising or using funds for terrorism purposes, the ATF Act also confers



information gathering powers on the police and empowers the courts to make orders and impose penalties in relation to investigations relating to terrorism offences similar to those provisions applicable to money-laundering offences set out in the Act.

The Regulations have been made pursuant to powers conferred upon the Minister of Justice by provisions of the Act and the ATF Act. The Regulations specify arrangements which must be in place in financial institutions within the scope of the Regulations in order to prevent operations relating to money laundering or terrorist financing.

The FIA Act establishes an independent agency to receive reports of suspicious transactions from regulated financial institutions and other persons and to collate, analyse and, if appropriate, disseminate information to law enforcement for investigation.

Guidance Notes

General and sector specific Guidance notes on the Prevention of Money Laundering and Combating Terrorist Financing are available from the BMA [website](#).

The Bermuda Monetary Authority (the BMA) is the supervisory authority for AML/ATF regulated financial institutions and, pursuant to the SE Act, has a duty to effectively monitor relevant persons that it supervises, and take necessary measures to secure compliance with powers to impose penalties on institutions which fail to comply. These include the power to cancel the registration of a non-licensed person and to levy a civil penalty on all institutions. The Minister of Justice also has the power to designate a professional body as the supervisory authority in relation to relevant persons (e.g. lawyers and accountants) regulated by it.

The purpose of the Guidance Notes is to provide an outline of the regulatory framework for AML and ATF as well as to interpret the requirements of the relevant AML/ATF law and regulations indicating good industry practice procedures through a proportionate, risk-based approach. The Guidance Notes also assist with the process of designing and implementing the systems and controls necessary to mitigate the risk of institutions being used in connection with money laundering and the financing of terrorism.

It is not intended that the guidance be applied unthinkingly as a checklist of steps to take but rather that financial institutions encourage their staff to "think risk" as they carry out their duties within the AML/ATF regime. The BMA expects financial institutions to address their management of risk in a thoughtful and considered way, and to establish and maintain systems and procedures which are appropriate and proportionate to the risks identified.

The Courts take account of any relevant guidance issued by a supervisory authority (such as the BMA) and thus the Guidance Notes provide a sound basis for assisting financial institutions in meeting their legislative and regulatory obligations. Any departures from such guidance, and the rationale for doing so, should therefore be documented and financial institutions will have to stand prepared to justify such departures to their supervisory authority.

Regulators and monitoring authorities

The BMA is the supervisory and enforcement authority for AML/ATF regulated financial institutions.

The BMA is responsible as part of its regulatory function, to monitor compliance with the Regulations.

FIA Contact

The FIA is contactable at info@fia.bm.

Reporting requirements/obligations

The primary offences (such as assisting in the laundering of money), apply to all "persons", whereas the regulatory AML/ATF regime applies to "financial institutions" acting in the course of business carried on by them in or from Bermuda.

"Financial institutions" are defined as persons who:

- carry on deposit-taking business within the meaning of the Banks and Deposit Companies Act 1999;
- carry on investment business within the meaning of the Investment Business Act 2003;
- are insurers (but not reinsurers) registered under the Insurance Act carrying on certain kinds of long-term business;
- are insurance managers or brokers registered under the Insurance Act in so far as they act as managers or brokers in connection with certain kinds of long-term business (other than reinsurance business);
- carry on the business of fund administrator within the meaning of the Investment Funds Act 2006;
- carry on money service business within the meaning of the Bermuda Monetary Authority Act 1969;
- carry on trust business within the meaning of the Trusts (Regulation of Trusts Business) Act 2001 and are not otherwise exempted under the Trusts (Regulation of Trust Business) Exemption Order 2002; or
- are operators of investment funds within the meaning of the Investment Funds Act 2006.

The regulatory regime also applies to "independent professionals". Independent professionals are professional legal advisers or accountants providing legal or accountancy services to other persons when participating in financial or real property transactions concerning the following:

- (a) buying and selling real property;
- (b) managing client monies, securities or assets;
- (c) managing bank, savings or securities accounts;



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- (d) organising the contributions for the creation, operation or management of companies;
- (e) the creation, operation or management of legal persons or arrangements;
- (f) the buying and selling of business entities.

Financial institutions and independent professionals are required to ensure that their employees are periodically trained on the content of the Legislation and the procedures instituted in order to ensure compliance with the duties imposed thereunder.

Offences

Under the Act, five primary offences are defined:

- (1) concealing or transferring the proceeds of criminal conduct;
- (2) assisting another to retain the proceeds of criminal conduct;
- (3) acquisition, possession or use of the proceeds of criminal conduct;
- (4) failure to disclose knowledge or suspicion of money laundering; and
- (5) tipping off.

Predicate offences

A money laundering offence is committed if the funds in question represent proceeds of criminal conduct: "Criminal conduct" is defined as drug trafficking or any relevant offence. "Relevant offence" is defined as (a) any indictable offence in Bermuda other than a drug trafficking offence; or (b) any act or omission which, had it occurred in Bermuda, would have constituted an indictable offence other than drug trafficking.

Is foreign tax evasion a predicate offence?

Tax offences may give rise to a money laundering offence in the same way as any other criminal conduct. A hybrid offence (meaning an offence punishable either by summary conviction or indictment, at the discretion of the Crown) of evading taxation is created by the Taxes Management Act 1976 and as such, tax evasion could amount to "criminal conduct" for anti-money laundering purposes. As regards conduct outside Bermuda, the test is whether such conduct, had it occurred in Bermuda, would have constituted the offence of criminal tax evasion.

Penalties and reporting requirements

Depending upon the specific offence, penalties can range on a scale of up to 20 years imprisonment or an unlimited fine or both. For further information regarding both penalties and reporting requirements for anti-money laundering and anti-terrorist financing offences, see the Compendium referred to under Statutes below.

Statutes

Conyers Dill & Pearman has prepared a compendium of the Bermuda Anti-Money Laundering and Anti-Terrorist Financing legislation. It can be found at the Conyers Dill & Pearman [website](#).

It includes the key legislation and related statutes, statutory instruments, rules and statutory appointments, incorporating all amendments to November 2020.

The AML and CTF regime is a key part of a wider ecosystem of business crime supported by exchanges of information with other countries (which is outside the scope of this note) and includes corporate fraud, insider dealing, market abuse, sanctions and other offences, a number of which may constitute predicate offences to money laundering.

This high-level overview is not comprehensive and should not be regarded as legal advice. Specific legal advice should be sought in every case.

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