

NOVEMBER 2018

# Consultation Paper on Proposed Legislative Amendments to the Anti-Money Laundering Legislation

National Anti-Money Laundering Committee  
(NAMLC)

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## INTRODUCTION AND BACKGROUND

### Proposed Amendments to the Anti-Money Laundering and Anti-Terrorist Financing Framework

1. This Consultation Paper (CP) is submitted to industry and seeks feedback on the Government's intention to further update its Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) framework, to support Bermuda's continued efforts to enhance the effectiveness and technical compliance with international standards.
2. Bermuda is in the midst of the 4<sup>th</sup> Round Mutual Evaluation of its AML/ATF regime. The Assessors are examining Bermuda's regime against the Financial Action Task Force's (FATF) 2012 Recommendations and the 2013 Methodology (as revised up to the time of the Assessment). The Bermuda Government is committed to strengthening the AML/ATF framework to ensure continued compliance with the revised international standards and to build a robust regime capable of protecting Bermuda's financial system from being misused for money laundering and terrorist financing.
3. In summary, the proposed amendments are as follows:
  - i. extend existing disciplinary measures/penalties, which can be imposed by supervisors on their supervised entities, to be available for breaches of obligations in relation to international sanctions;
  - ii. enlarge the list of entities in respect of which a decision to impose a disciplinary measure/penalty can be published to include real estate brokers and agents;
  - iii. permit the publication of any decision by a supervisor to impose on a supervised entity any of the disciplinary measures now available in Chapter 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA);
  - iv. Clarify that the Financial Intelligence Agency's (FIA) power to make disclosures to the Governor to facilitate the discharge of his statutory functions in relation to international sanctions, will also extend to the authority to whom the Governor may extend any of those functions.
4. Government therefore intends to amend:
  - i. Chapter 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA); and
  - ii. Section 18 of the Financial Intelligence Agency Act 2007 (FIAA)
5. The purpose of this Consultation Paper is therefore to:
  - Advise industry of the proposed amendments to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA) and the Financial Intelligence Agency Act 2007; and

- Solicit comments from stakeholders on the proposed amendments for areas of potential impact and concern to them.

## PROPOSED LEGISLATIVE AMENDMENTS

### **Disciplinary Measures for Breach of International Sanctions Obligations**

6. Technical Compliance Criterion 7.3 of the FATF's Methodology requires that countries should adopt measures for monitoring and ensuring compliance by financial institutions and designated non-financial businesses and professions (DNFBPs) with the relevant laws or other enforceable means governing the obligations in relation to Targeted Financial Sanctions related to Proliferation. Failure to comply with such laws or enforceable means should be subject to civil, administrative or criminal sanctions.
7. Recent amendments to section 5 of SEA imposed obligations on supervisory authorities to monitor regulated entities and take effective measures to secure their compliance with international financial sanctions. However, very limited corollary amendments were made to Chapter 4, to specify which disciplinary measures could be imposed in respect of breaches of international sanctions obligations.
8. Sections 20A (power to issue directives) and 20H (injunctions), already specify international sanctions as a legal basis for imposing those disciplinary measures.
9. It is therefore proposed that sections 20 (civil penalties), 20C (revocation of license), 20E (public censure) and 20I (winding up/dissolution on petition from the competent authority) be amended to specify that such disciplinary measures can be imposed for breach of obligations in relation to international sanctions, consistent with Technical Compliance Criterion 7.3 of the FATF's Methodology. The expectation is that supervisory authorities should be given a wide range of sanctioning powers to address the wide variances in the nature and seriousness of breaches. These proposed amendments will achieve this purpose in relation to breaches of international sanctions obligations.

**THE PROPOSED AMENDMENT: Amend sections 20, 20C, 20E and 20I of SEA to make available for breach of international sanctions obligations, disciplinary measures such as, (i) civil penalties, (ii) revocation of license, (iii) public censure, and (iv) petition for winding up/dissolution.**

### **Publication of disciplinary measures imposed on real estate brokers or agents**

10. The ability of supervisors to publish decisions to impose penalties is a key component of ensuring that such sanctions are dissuasive, in keeping with Technical Compliance Criterion 35.1 of the FATF Methodology. Currently, section 21 of SEA permits the publication of decisions to impose penalties by competent authorities where the penalty was imposed on an AML/ATF regulated financial institution, a financial group or a regulated non-financial business or profession. Neither real estate brokers nor real estate agents are caught by the definitions of these three groups of entities, an oversight to be corrected by way of the proposed amendment.
11. It is therefore proposed to amend section 21 by adding real estate brokers and agents to the list of entities in respect of which a decision to impose a penalty may be published.

**THE PROPOSED AMENDMENT: Amend section 21 of SEA to include real estate brokers/agents in respect of whom disciplinary decisions may also be published.**

### **Publication of other disciplinary measures (other than Civil Penalties)**

12. When SEA was amended earlier in 2018 to introduce a range of new disciplinary measures, no consequential amendment was made to section 21, to make it clear that decisions to impose any of these new disciplinary measures could also be published.
13. At present, section 21 specifically applies to penalties imposed under section 20(1) – that is, to civil penalties, as the term 'penalty' is a term of art, defined in section 20(7) of SEA. Therefore, section 21 does not cover the new disciplinary measures.
14. It is therefore proposed, for good order, that section 21 should be amended to reflect the range of disciplinary measures now available to supervisory authorities under Chapter 4 of SEA and to empower them to publish decisions pertaining to any sanction imposed thereunder.

**THE PROPOSED AMENDMENT: Amend section 21 to extend publication to all disciplinary measures available in Chapter 4 of SEA.**

### **FIA power to make disclosures**

15. Technical Compliance Criterion 29.5 of the FATF's Methodology requires that the FIA be able to disseminate, spontaneously and upon request, information and the

results of its analysis to relevant competent authorities. Currently, section 18 of the FIA Act designates the persons/agencies to whom the FIA may make permitted disclosures to allow said person/agency to discharge their statutory functions. Section 18(1)(aa) of the FIA Act empowers the FIA to make disclosures to “the Governor, to discharge his statutory functions in relation to international sanctions;”.

16. Recently the Governor by a delegation instrument delegated some of his statutory powers in relation to international sanctions to the Minister of Legal Affairs. Although section 18(1)(b) also empowers the FIA to make disclosures to that Minister to facilitate the discharge of her statutory functions, it is arguable whether the Minister’s delegated responsibilities can truly be said to be her “statutory functions”, as the delegation instrument may not be deemed to be a statute.
17. Accordingly, for the avoidance of doubt, an amendment is proposed to make it clear that the FIA is empowered to make disclosures to the Governor and/or to the Governor’s lawful delegate, for the purpose of facilitating the discharge of their functions in relation to international sanctions.

**THE PROPOSED AMENDMENT: Amend section 18(1)(aa) of the FIA Act to read as follows: “the Governor to discharge his statutory functions in relation to international sanctions or to any person to whom the Governor has delegated such functions”.**

## **CONCLUSION & NEXT STEPS**

18. The relevant Government agencies are in the process of drafting instructions to make the amendments to the AML/ATF legislative framework proposed in this Consultation Paper. It is anticipated that drafting instructions will be issued in the coming weeks and taking into account input provided during this consultative process. With the approval of Cabinet it is hoped that the finalised Bill will be tabled in Parliament in early 2019.
19. Accordingly, it is imperative that the consultative process be completed within a timely manner to enable the Bill to be drafted, taking into account any feedback received from industry, finalised, approved by Cabinet, tabled and passed in Parliament during the first Parliamentary session in 2019.
20. NAMLC therefore seeks the cooperation of industry to review this brief Consultation Paper and should you have any preliminary observations concerning

the proposed legislation you may provide written comments and feedback **no later than 30 November 2018** to either of the addresses below:

- i. Via mail: Office of the National Anti-Money Laundering Committee  
2<sup>nd</sup> Floor  
Government Administration Building  
30 Parliament Street  
Hamilton, HM12
- ii. Via e-mail: [info-NAMLC@gov.bm](mailto:info-NAMLC@gov.bm)

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