



23 May 2018

Dear Industry Stakeholders,

Response to Consultation Paper - Scope of AML/ATF Activities- February 2018 (the Consultation Paper²)

The Bermuda Monetary Authority (the Authority) wishes to thank stakeholders for their continued engagement and feedback on the Consultation Paper as the Authority assists the National Anti-Money Laundering Committee in preparation for the upcoming Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) assessment.

The Consultation Paper proposed for the definition of AML/ATF regulated financial institutions to include institutions carrying on money lending activities and initiated a period of industry consultation on the matter. Responses are as follows:

1. Proposed Amendment to widen the scope of AML/ATF Regulated Financial Institutions to include institutions carrying on money lending.

Feedback from industry stakeholders proposed the following:

- a) Vagueness of description of activities - industry pointed out the activities of financial guarantees, financial leasing and lending are vague, and it would be preferable to have an exemption power to enable the Minister responsible for Bermuda's AML/ATF regime to make exemptions as recommended by the Authority. The Authority agrees with this recommendation and will propose an exemption making power.
- b) Financial Guarantees – representatives of the insurance industry requested that financial guarantees not be in the scope of the AML/ATF activities. The Authority is of the view a blanket exemption would be too broad and will recommend to NAMLC a specific criterion for exemptions for financial guarantees which are reinsurance.
- c) There was a question raised by the insurance representatives about the application of the amending law and whether it applied to the insurer's entire business or just specific transactions. The usual interpretation is that where an activity is carried on as part of a business, the entire business would be subject to AML/ATF oversight based on a risk assessment which would focus on the particular activities that are now within the scope of the AML/ATF regime.
- d) Finally, there was a query raised as to whether the law would be retroactive and apply to money lending activities which entities are carrying on at the present time. The amending

law would apply retroactively. The law will apply retroactively but it is proposed that there will be a grandfathering period of three months to notify the Authority that an entity is carrying this business and register under the Proceeds of Crime (Anti-money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008. Entities will have a further six months to put in place the necessary systems and procedures to comply with the AML/ATF legislation.

2. Proposed Amendment to the Insurance Act 1978, section 19

In light of this initiative, the Authority reviewed the scope of activities carried on by licensed entities and from a prudential supervisory perspective proposed extending the restriction under section 19 of the Insurance Act 1978 to restrict all licensed entities from carrying on any activity other than insurance business except for business which is defined under the Insurance Act 1978 as ancillary business. This restriction would compliment the implementation of this expansion of the scope of activities subject to Bermuda's AML/ATF regime and further limit the application to insurers. There was no objection to this proposed amendment.

Representatives of the insurance sector proposed that activities that are "ancillary" to insurance business and permitted under section 19 be excluded from AML/ATF oversight. The Authority supports this proposal and will propose an exemption for activities that are ancillary as set out under the Insurance Act 1978 from the scope of activities under the amended definition of AML/ATF regulated financial institutions for insurers. However the exemption would specifically apply to activities offering loans and guarantees where such activities are part of an agreement to provide insurance, the primary purpose of the agreement being to transfer risk for payment of a premium.

Conclusion

The Authority thanks stakeholders for their feedback, and remains committed to working with industry and other interested parties to ensure results achieved are in the best interests of the Bermuda market.

Sincerely,

Bermuda Monetary Authority