



Consultation Paper
Segregated Accounts Companies and AML/ATF Risks

May 2018

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INTRODUCTION

Proposed Amendments to the Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Framework – Segregated Accounts

1. This Consultation Paper (CP) is submitted by the Bermuda Monetary Authority (the Authority or BMA) on behalf of Bermuda's National Anti-Money Laundering Committee (NAMLC) for the attention of industry and other affected persons seeking feedback on:

Government proposal to strengthen Bermuda's AML/ATF Framework in relation to segregated accounts established by the Segregated Accounts Companies Act 2000 (SAC Act) (segregated accounts) and Separate Accounts established by a Private Act (separate accounts) by putting in place appropriate CDD vetting requirements.

2. The Government is committed to ensuring that Bermuda has a strong, robust AML/ATF framework which is compliant with the relevant international standards, namely the Financial Action Task Force (FATF) 2012 Recommendations (the Recommendations) and the 2013 Methodology (the Methodology). This legislative proposal is part of an ongoing process for Bermuda to attain a higher level of compliance with these standards. Additionally, these legislative proposals will help ensure Bermuda remains competitive and in line with the AML/ATF regimes of similar leading jurisdictions.
3. It should be noted that Bermuda continues to prepare for the 2018 Mutual Evaluation of its AML/ATF regime. The Assessors will examine Bermuda's regime against the requirements in both the Recommendations and the Methodology. The outcome of this evaluation is key to the protection of Bermuda's standing as a quality international financial centre.
4. To that end, the Government intends to amend the Proceeds of Crime 1997 (POCA), the Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA), the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (POC Regulations), and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA). The scope of the amendment will be to ensure that all owners of segregated accounts or separate accounts are vetted as beneficial owners in accordance with the provisions dealing with customer due diligence. This amendment will apply not only to "AML/ATF regulated financial institutions" which have segregated or separate accounts but to any segregated account or separate account company even though they are not subject to AML/ATF regulation.

In summary the amendments proposed will be as follows:

- a) Extend the definition of beneficial owners to include persons who own or control a segregated account or separate account.
- b) Clarify that the CDD requirements under regulation 5 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 will apply to the beneficial owners of a segregated account or separate account as well as the legal owners.
- c) Where a segregated account or separate account is not itself a regulated AML/ATF financial institution and does not engage a service provider who is subject to AML/ATF regulation, such as a Corporate Service Provider, or an Insurance Manager or an investment Fund Administrator, the company will be required to register as a Non-Licensed Person (NLP) under SEA.

To achieve these objectives, amendments will be made to, *inter alia*, POCA, ATFA, SEA, and POC Regulations.

5. The purpose of this CP is therefore to:

- Solicit information from stakeholders on the nature and extent to which companies use segregated accounts and separate accounts, and the Money Laundering (ML)/Terrorist Financing (TF)/ Proliferation Financing (PF) and prudential risks in relation to such activities
- Solicit comments from stakeholders on the proposed amendments and any concerns about the tightening up of the oversight of segregated/separate accounts to ensure accounts are not used for ML or TF purposes

6. It should be noted that the Authority is currently undertaking a review of its procedures for prudential regulation and supervision of segregated accounts and separate accounts.

7. It should also be noted that this consultation does not focus on the Government proposal presently under consultation to adopt new legislation for incorporated segregated accounts.

8. The overall objective will be to require a company that operates with segregated accounts or separate accounts and does not engage a service provider which is an AML/ATF regulated financial institution to register with the Authority (section 9(1) of SEA), and will be required to comply with the AML/ATF Regulations.¹

9. The Authority therefore seeks your cooperation in reviewing this Consultation Paper and providing written feedback no later than 4 June, 2018 to either of the addresses given below:

- ii. Via mail: Bermuda Monetary Authority, 43 Victoria Street, Hamilton,

¹ From the SEA, ““AML/ATF Regulations” means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, and any subsequent regulations made under section 49(3) of the Proceeds of Crime Act 1997 or section 12A of the Anti-Terrorism (Financial and other Measures) Act 2004.”

HM12 or P.O. Box 2447 Hamilton, HM JX

iii. Via e-mail: policy@bma.bm

I. BACKGROUND TO SEGREGATED ACCOUNTS AND SEPARATE ACCOUNTS OWNED OR CONTROLLED BY THIRD PARTIES

Ownership of Segregated Accounts and Separate Accounts

10. BMA currently licenses segregated account and separate account companies under the Insurance Act 1978 (the Act 1978). The business carried on through the accounts is wide ranging and depend on the nature of insurance business that the insurer intends to underwrite, as well as its capital structure, operational model and risk profile. In accordance with Section 4 of the 1978 Act, an insurer may carry on general insurance business and Long-Term business or special purpose business and may rely upon the use of segregated accounts. In addition, the BMA regulates investment funds under the Investment Funds Act 1978 and investment business providers under the Investment Business Act 2003, which may also have segregated account and separate accounts structures.
11. In addition to segregated account and separate account companies which are regulated financial institutions, there are companies registered under the Segregated Accounts Companies Act 2000 which does not carry on any regulated financial activity. According to the registry 65 such companies have been approved by the Minister.
12. In addition, Private Acts may be used to set up separate account structures. These Private Acts were first introduced in the early 1990's by entities that were regulated by the BMA. Although most of the Private Act structures are managed by licensed entities, there is no restriction. AS such, companies which do not carry out any financial activity have been given permission to operate with separate accounts under a Private Act.
13. A segregated account is not a separate legal entity but is established by way of a contract in accordance with the Segregated Accounts Companies Act 2000. It has the ability to segregate the business (assets, liabilities and capital) of the regulated financial institution into accounts. Accounts established under the SAC Act, are legally separated from the general account as the assets are held in trust only for the purposes of the segregated account. For insurers, the insurance policy or group of policies are segregated within a segregated account or in the case of investment funds, separate fund structures pursuant to a contract of some form or governing instrument or Private Act. For those Segregated Account Companies (SACs) which do not carry out financial services, similar arrangements can be made for holding and managing the assets in the accounts. The segregated account provides ring

fencing of assets and liabilities using a governing instrument or contract to provide greater certainty for both the separate account owner and counterparties.

14. A separate account established under a Private Act has different features. Like the segregated account, a separate account is not a separate legal entity but is created in accordance with the Private Act. That Act will define the criteria to identify the scope of activities which may be carried out by the company. In most cases, the Private Acts are sponsored by regulated financial institutions although there have been exceptions. A Private Act can apply to one or more regulated financial institutions or companies, depending on the power granted under the Private Act by Parliament. The form and requirements for a separate account will depend on the content of each Private Act.

The following definitions relate to segregated accounts under the SAC Act;

*“**segregated account**” means a separate and distinct account (comprising or including entries recording data, assets, rights, contributions, liabilities and obligations linked to such account) of a segregated accounts company pertaining to an identified or identifiable pool of assets and liabilities of such segregated accounts company which are segregated or distinguished from other assets and liabilities of the segregated accounts company for the purposes of this Act;*

*“**general account**” means an account comprising all of the assets and liabilities of a segregated accounts company which are not linked to a segregated account of that company;*

*“**governing instrument**” means one or more written agreements, instruments, byelaws, prospectuses, resolutions of directors, registers or other documents (including electronic records), setting out the rights, obligations and interests of account owners in respect of a segregated account;*

*“**Section 11 (4)**”*

Unless otherwise expressly agreed in writing by the parties to the transaction—by virtue of a governing instrument or contract which is binding on those parties in relation to the affected segregated accounts or general account, as the case may be, and which is executed by parties having authority in relation to those accounts

15. Segregated accounts and separate accounts are set up by persons to have independence from the general account and in some cases are managed by third parties. For this reason, there may be AML /ATF risks as the beneficial owners are separate from the owners of the company and may not be vetted in accordance with the AML/ATF legislation in Bermuda.
16. FATF Recommendations require that jurisdictions have regimes in place that are adequate to identify the beneficial owners and controllers of legal entities and arrangements which

may be established in the jurisdiction. Specifically, Recommendation 24 deals with beneficial ownership and Recommendation 10 deals with customer due diligence requirements by financial institutions and vetting of beneficial owners of customers. Presently under the SAC Act or the Private Acts, there are no clear legislative mandates for the SAC to identify the owners of the segregated account or separate account in order to meet the requirements of Recommendations 10 and 24. Furthermore, there is no clear legal requirement imposed on service providers such as Corporate Service Providers or Insurance Managers who administer an SAC.

17. This gap was identified by the Bermuda Monetary Authority when carrying out an AML/ATF risk assessment of various sectors regulated by the Authority. This assessment highlighted the need to provide for clear legal obligation imposed on the SAC to ensure that the owners of segregated accounts or separate accounts were identified and verified.

II. PROPOSED CHANGE

18. To address the identified gap it is proposed that the “owner” of a segregated accounts and separate accounts under a governing instrument or a Private Act will need to be vetted in compliance with international AML/ATF standards in the same manner in which the owners or controllers of the institution are vetted.

19. The proposed approach to implement this AML/ATF requirement is

- To amend the definition of beneficial ownership under the Proceeds of Crime (Anti Money Laundering and Anti-Terrorist Financing) Regulations 2008 to include persons who own segregated accounts or separate accounts
- To impose a duty on the SAC or company operating under a Private Act to identify and verify the owners of all segregated accounts or separate accounts
- To require the following AML/ATF regulated financial institutions who provide services to an SAC or company operating under a Private Act to carry out vetting for the purposes of CDD on the beneficial owners of segregated and separate accounts;
 - Insurance Manager,
 - Investment Business
 - Corporate Service Provider
 - Fund Administrator
 - Custodian
- To require for SACs which are not AML/ATF regulated financial institutions or which do not engage a service provider, to register as an NLP under the SEA.

It is not intended to mandate that SAC companies must have a service provider. However, where there is an Insurance Manager or a Corporate Service Provider they will be vetting the owners of the segregated accounts or separate account in the same manner that the beneficial owners of the entity are vetted. To that end the criteria for AML/ATF vetting may need to be amended to reflect the ownership structure of segregated accounts or separate accounts:

- Single preference shares or ordinary shares that are 10% or more
- Contractual nature of the ownership
- Variable insurance or investment structures such as insurance pools, multiple small owners with a controller who is not an owner, trusts, funds, rent-a-captives, etc.

It is not intended for the account owners to report as controllers under section 30D or 30 EA of the Insurance Act 1978 or equivalent provisions of the Investment Funds Act 2006 or the Investment Business Act 2003.

III. CONCLUSION & NEXT STEPS

20. In summary the proposed amendments are as follows:
- a) To amend the definition of beneficial owner under the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to include persons who own or control segregate or separate accounts of segregate account companies.
 - b) To expand the provisions for customer due diligence to include as customers persons who own and control segregated accounts or separate accounts.
 - c) To direct that where an SAC or Private Act company does not engage a service provider who is subject to AML/ATF regulation, the entity must register as an NLP and be subject to AML/ATF oversight.
21. As noted, these proposed legislative amendments are consistent with Bermuda's steadfast commitment to develop and implement a framework to effectively detect and prevent ML/TF/PF. The Bermuda Government also remains committed to compliance with the international standards to combat ML/TF/PF, and intends to continue to build upon Bermuda's excellent reputation as a well-regulated jurisdiction, providing a positive and secure environment within which to conduct quality business.
22. As the 2018 evaluation requires Bermuda to demonstrate effective implementation of its AML/ATF regime, it is important to proceed with this matter in a timely fashion. Taking into account input provided during this consultative process, the finalised Bill will be tabled in Parliament as early as possible.