

Notice to Industry on AML/ATF Regulated Activities - Interpretative Note

Regulated financial institutions are reminded that the definition of “AML/ATF regulated financial institution” under the Proceeds of Crime Act 1997 has been amended to include institutions which carry out any of those activities as set out in the FATF recommendations. In particular, a new paragraph 42A(1)(j), with a new schedule 3, has been added as set out in the Annex.

Most of the activities which have been added to the definition are covered by legislation presently in effect dealing with financial institutions carrying on deposit-taking business, money service provider business, corporate services, trustee services, investment business, investment fund administration or operating as investment funds. However, during the CFATF assessment of Bermuda’s AML/ATF regime, NAMLC determined that entities carrying on lending, financial guarantees and financial leasing business, other than by a regulated financial institution, were not subject to regulation under the proceeds of crime legislation. To address this gap, this amendment was made to capture all of the FATF activities as set out in the new Schedule 3.

- (a) underwriting and placement of life insurance and other investment related insurance; and
- (b) money and currency changing.

Although most of the activities set out in the Schedule 3 are similar to the activities which are already subject to AML/ATF oversight under the Proceeds of Crime Act 1997 and related legislation, the Authority clarifies the interpretation and application of the following activities:

- (i) ***Individual and collective portfolio management (Paragraph (i)*** - The Authority interprets this activity as investment business as defined under the Investment Business Act 2003 and carried on in accordance with the Act.
- (ii) ***Underwriting and placement of life business and other related investment related insurance (Paragraph (l)*** - The Authority interprets the scope of “underwriting of life business and related investment business” to apply to insurers who write direct long-term business as defined under the Insurance Act 1978, but does not include reinsurance of long-term business. However, where a reinsurer also writes direct long-term business, that aspect of their business is subject to AML/ATF oversight.

Any questions may be sent to [**Policy@bma.bm**](mailto:Policy@bma.bm).

ANNEX

The definition of AML/ATF regulated financial institution is set out under Section 42A(1) of the Proceeds of Crime Act 1997:

“**AML/ATF regulated financial institution**” means a person who—

- (a) carries on deposit-taking business within the meaning of section 4 of the Banks and Deposit Companies Act 1999;
- (b) carries on investment business within the meaning of section 3 of the Investment Business Act 2003;
- (c) is an insurer (and not a reinsurer) registered under section 4 of the Insurance Act 1978 who carries on long-term business falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (d) is an insurance manager or broker registered under section 10 of the Insurance Act 1978, but in relation to an insurance broker, only in so far as he acts as a broker in connection with long-term business (other than reinsurance business) falling within paragraph (a) or (c) of the definition of “long-term business” in section 1(1) of the Insurance Act 1978;
- (e) carries on the business of a fund administrator within the meaning of section 2(2) of the Investment Funds Act 2006;
- (fa) carries on money service business within the meaning of section 2(2) of the Money Service Business Act 2016;
- (f) carries on corporate service provider business within the meaning of section 2(2) of the Corporate Service Provider Business Act 2012;
- (g) carries on trust business within the meaning of section 9(3) of the Trusts (Regulation of Trust Business) Act 2001 except for any person which is exempted by or under paragraph 3 of the Trusts (Regulation of Trust Business) Exemption Order 2002 provided that—
 - i. such exempted person utilises the services of a corporate service provider business, licensed by the Bermuda Monetary Authority, within the meaning of section 2(1) of the Corporate Service Provider Business Act 2012; or
 - ii. such exempted person has in its corporate structure or engages the services of a trust business, licensed by the Bermuda Monetary Authority, within the meaning given in section 9(3) of the Trusts (Regulation of Trust Business) Act 2001;
- (h) is the operator of an investment fund within the meaning of section 2 of the Investment Funds Act 2006;
- (i) is a licensed undertaking carrying on digital asset business within the meaning of section 4 of the Digital Asset Business Act 2018;
- (j) carries on for or on behalf of a customer the business of providing any of the financial activities specified in Schedule 3;”

SCHEDULE 3
(Section 42A (1))

SPECIFIED FINANCIAL ACTIVITIES

Financial activities

- 1 The following financial activities are specified for the purposes of paragraph (j) of the definition of an AML/ATF regulated financial institution in section 42A(1)—
- (a) acceptance of deposits and other repayable funds from the public;
 - (b) lending, including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting);
 - (c) financial leasing but not including consumer products;
 - (d) money or value transfer services;
 - (e) issuing and managing means of payment (including credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts and electronic money);
 - (f) financial guarantees and commitments, not including financial guarantee insurance which is insurance business under the Insurance Act 1978;
 - (g) trading in—
 - (i) money market instruments (including cheques, bills, certificates of deposit and derivatives);
 - (ii) foreign exchange;
 - (iv) exchange, interest rate and index instruments;
 - (v) transferable securities; or
 - (vi) commodity futures trading;
 - (h) participation in securities issues and the provision of financial services related to such issues;
 - (i) individual and collective portfolio management;
 - (j) safekeeping and administration of cash or liquid securities;
 - (k) otherwise investing, administering or managing funds or money;
 - (l) underwriting and placement of life insurance and other investment related insurance; and
 - (m) money and currency changing.