



12 November 2019

## **NOTICE**

### **Cannabis Related Risk**

As an international financial centre, the Bermuda Monetary Authority (BMA) is committed to being a forward-thinking regulator that is able to facilitate global solutions and innovation in a prudent manner. Over the past several months, the BMA has seen an increase in enquiries for the licencing to conduct business in Bermuda concerning the cannabis sector.

The recent legalisation of cannabis in Canada has led the BMA to consider the implications of Bermuda offering licenced and Supervised Entities the opportunity to conduct business with entities that may be participating in the cannabis sector.

The BMA will not object to BMA-supervised Entities conducting business with a licensed cannabis cultivator, processor or seller, provided that the conduct of such business would not be contrary to any offences that may be provided for in the laws of a foreign jurisdiction which amount to “criminal conduct” within the meaning of section 3 of the Proceeds of Crime Act 1997 (“Act”). Where the conduct of such business may be in contravention of the Act, there may be a statutory defence under section 45B of the Act, which provides in part that a person does not commit an offence under section 43 (concealing or transferring criminal property), 44 (assisting another to retain criminal property) or 45 (acquisition, possession or use of criminal property) of the Act where there is knowledge or a reasonable belief that the relevant criminal conduct occurred outside Bermuda and was not unlawful under the criminal law applicable at the time in the foreign jurisdiction where it occurred. The onus of raising such a defence will be on the Supervised Entity.

Compliance will be satisfied when the cannabis activity in the foreign country is legal at all levels (including the federal), which rules out business activity originating from where cannabis may be legal at the state level, but is not legal at the federal level, i.e., the United States (US). While cannabis has been regulated and legal since October 2018, in Canada by the Federal Government, given Canada’s proximity to the US, care must be taken to ensure that the US (or any other country where cannabis is not regulated and legal at the federal level) is not the origin of the activity in the Canadian operation.

The onus will be on the BMA Supervised Entities to fully understand the applicable laws related to cannabis in the jurisdiction where the business activities are being conducted, including jurisdiction of origin. There is also an expectation that the appropriate level of precautionary measures will be taken by BMA Supervised Entities, to detect and prevent money laundering. This includes a risk assessment of the client. Additionally, BMA Supervised Entities defined as Regulated Financial Institutions under Proceeds of Crime Act section 42A must also apply customer due diligence or enhanced due diligence as required by the Proceeds of Crime Regulations 2008. This includes the need for the BMA Supervised Entity to conduct source of funds enquiries to ensure that the provenance of funds and capital of the business do not predate the date of legitimization of Cannabis business in the customers' jurisdiction. BMA Supervised Entities also have the obligation of filing Suspicious Activity Reports to the Financial Intelligence Agency should an entity observe behaviours that may indicate criminal activity.