



BAR RULES
DISCUSSION PAPER

For the purposes of discussion at the Supervisory seminar to be held in Bar Association offices on 30th November, and then for detailed consideration by Bar Council, CPA and the Chief Justice, below follow certain discussion principles for Rules to be adopted pursuant to sections 9 and 9A of the Bermuda Bar Act 1974 and likewise pursuant to Section 7 and 7A of the Chartered Professional Accountants of Bermuda Act 1973. That is to say Rules which relate to the operation of the Bar and CPA directly (Section 9/Section 7) and some which relate to the operation of the Board vis a vis Bar and CPA (Section 9A/Section 7A). Certain of the proposed rules in section B correspond to the proposals already made by Bar Council to the Minister for legislation to mandate registration with the Board.

It is to be stressed that the text in bold under each heading of the attached “Rules” document is a statement of a broad principle and not the finished text of any Rule. The specific wording and scope of the Rule would need to be drafted jointly between the three bodies (Board, Bar and CPA) for final approval by the Chief Justice, in accordance with section 9A (2) of the Bermuda Bar Act.

The need for rules to be enacted arises out of the National Risk Assessment in preparation for the mutual evaluation by FATF. That process revealed certain deficiencies in Bermuda’s governance and intelligence gathering regime which are more quickly cured by the Rules system rather than waiting for revisions to public legislation. Further, as some items relate to practice matters or data gathering by the Board, they are not suitable for public legislation. As the legal sector and the accounting sector figure very significantly in the FATF mutual evaluation, swiftness in improving our “technical compliance” with certain FATF recommendations is essential so as to be ready for the evaluation itself next year.

Although one should read the entire NRA submission, the conclusions reached for the Legal and accounting sector in the NRA vulnerability analysis, with corresponding principles for rules below, are:

- The existing mechanism should be improved upon whereby the Board can recommend disciplinary actions to Bar Council for infractions caused by their members concerning AML Laws and Regulations. (Rules A. 2 and 3).
- This mechanism should also establish a formal protocol to codify and coordinate appropriate interaction and mutual assistance between the Board and Bar Council, without compromising their respective authority, independence and integrity. (Rule A.6).

- Bar Council should be provided powers to limit areas of practice for persons admitted with criminal records to preclude them from carrying out specified activities. (Rule A.5).
- Establish a requirement for law firms to develop screening procedures to ensure high standards when hiring employees. (Rule A.4 and B.5).
- Better clarification needs to be obtained by the Board of the business relationship /services provided by law firms and their wholly owned/affiliated Corporate Service Providers (CSP's). (Rule B.4.b).
- Gather further details in Data Call concerning the above need for clarification as it relates to the business relationship/services provided by law firms and their CSP's. (Rule B.4.a).

Generally, Section 9A and Section 7A of the respective Statutes governing the Bar and CPA call for the introduction of Rules governing certain aspects of the functioning of the Board. No such Rules exist. It may therefore be an opportunity now for the adoption of the Board's self-generated operating principles as Rules corresponding to some of the statutorily described heads under Section 9A and then to develop further Rules corresponding to the remaining heads. This is desirable so as to formalize the functioning of the Board within the Bar Act and the CPA Act so that, with the further imprimatur of the Chief Justice, the workings and standing of the Board are more deeply embedded in the awareness of practitioners. That is to say, being Rules of the Bar and of the CPA, those Rules would be published on their respective websites and form part of the professional codes for their practitioners.

Finally, this process is desirable so as to more closely align the three organizations in pursuit of the outcomes mandated by FATF as advocated by Bermuda's own National Anti-Money Laundering Committee.

Bar Rules

A. Pursuant to Section 9 of Bermuda Bar Act 1974

1. *Admission to Bar (Section 9(1)(a) and (f) and Section 9(1) (bb) (i)) and Section 14 and Bermuda Bar (Practising Certificate) Rules 1984 and Bermuda Bar (Professional Companies) Rules 2009*

Notices of Call, applications for registration or recognition or the issuance of practicing certificates to be copied to Board and advice of Board to be taken into account.

2. *Discipline (Section 9(1)(c) and Section 9(1)(bb)(iv) and Bar Professional Conduct Committee Rules 1997)*

Board to report not just breaches of AML Regulations or “improper conduct” (per Section 25C (3)) but also non-compliance with requests or directions from the Board or any matter provided for in SEA which shall be treated as a disciplinary matter, being also a complaint under Section 21 and *material* weight shall be given to such complaint, together with any disciplinary action which the Board may recommend in the circumstances.

3. *Expulsion from Bar (Section 9(1)(a) and (f) and Bar Disciplinary Tribunal Rules 1997) and Section 10 of Bermuda bar Act 1974 9Practising Certificates)*

Board may recommend expulsion or non-renewal of practicing certificates or such lesser penalties as may be appropriate in circumstances of breaches of AML Regulations or non-compliance with SEA or mis-statements going to AML issues made in any affidavit supporting a call or registration or recognition of any barrister or professional company.

4. *Screening of Barristers and Pupils (Section 9(1)(a))*

All persons applying for practicing certificates or certificates of registration or recognition to be screened for AML

5. *Limitation of Practice Area (Section 9(1)(a))*

On recommendation of Board, Bar Council to limit areas of practice for persons admitted with criminal records to preclude them from carrying out the specified activities referred to in POCA Section 49(d).

B. Pursuant to Section 9A of Bermuda Bar Act 1974 and Institute Of Chartered Accountants Of Bermuda By-Laws 2006

1. *Compulsory Registration with Board (Section 9A(1)(c))*

All Firms and sole practitioners to register with the Board and provide a full list of the matter types and professional practice areas engaged in by their respective practices.

2. *Exemption from supervision by Self-certification (Section 9A(1)(c))*

Only after registration and production of the matter type information, is a firm then entitled to self-certify that none of its practice areas involves financial or real estate transactions concerning any of the practice areas flagged by the Board as falling within the ambit of

“specified activities”. Self-certification exempts such firm from active supervision only i.e. the firm continues to be **“monitored”** for purposes of SEA but will be treated as equivalent to very low risk. Such firm will remain on the register and is required to self-certify annually.

3. *Inspections of non-registrants (Section 9A(1)(c))*

Where any firm fails to register with the Board, it shall be a disciplinary matter for the Bar Professional Conduct Committee. A non-registering firm or sole practitioner shall be subject to inspection by the Supervisor in any event, in the presence of a representative of Bar Council, by way of the collection of evidence in the disciplinary hearing. A refusal to allow inspection shall itself be a disciplinary offence.

4. *Maintenance of Records & Supply of Data to Board (Section 9A(1)(c) or Barristers (Accounts And Records) Rules 1976)*

a. *Harmonised Coding of Practice Matters*

The Board shall systematize the nomenclature of practice areas and legal products and shall assign a risk-rated code to each distinct matter type. All Regulated Professional Firms shall maintain records by matter type and annually shall file reports of their activities corresponding to the code names issued by the Board.

b. *Family Trees*

Each Regulated Professional Firm shall maintain a record of its group structure, if any, showing all companies or partnerships of which such Regulated Professional Firm is a holding company, subsidiary or affiliate or otherwise in shared ownership or control. Such records shall be provided to the Supervisor on registration and on each occasion when there is a change in such structure. Regulated Professional Firms shall indicate where compliance with the AML Regulations and any requirement of SEA is made on a group basis, and in accordance with what standards.

5. *Screening of Staff (Section 9A(1) general power to make Rules)*

All persons employed by any Regulated Professional Firm to be screened for AML.

6. *Mutual assistance*

Each of Bar Council, CPA and the Board shall appoint a representative who shall together form a committee for the purpose of coordinating interaction and mutual assistance between their respective bodies in relation to AML/ATF, POCA and SEA with a view to directing the individual members of the respective professions as a matter of their professional conduct duties.

CPA By-laws

A. Section 7 of the Chartered Professional Accountants of Bermuda Act 1973

1. *Membership of CPA (Section 7(1)(b) and By-Laws 5, 6 and 16 and Rules of Professional Conduct 102.1, 102.2 and 103)*

Notices of membership applications to be copied to Board and advice of Board to be taken into account.

2. *Discipline (Section 7(1)(g) and By-Law 69)*

Board to report not just breaches of AML Regulations or “improper conduct” (per Section 8C (3)) but also non-compliance with requests or directions from the Board or any matter provided for in SEA which shall be treated as a disciplinary matter, being also a complaint under By-Law 70(a) and *material* weight shall be given to such complaint together with any disciplinary action which the Board may recommend in the circumstances.

3. *Expulsion from CPA (Section 7(1)(g) and By-Law 17)*

Board may recommend expulsion or non-renewal of membership or such lesser penalties as may be appropriate in circumstances of breaches of AML Regulations or non-compliance with SEA or material mis-statements going to AML issues made in any application for membership.

4. *Screening of Accountants (Section 7(1)(h) and By-Law 60)*

All persons applying for Membership to be screened for AML

B. Section 7A of the Chartered Professional Accountants of Bermuda Act 1973

1. *Compulsory Registration with Board (Section 7A(1)(c)) and By-Law 68 and Rules Of Professional Conduct 206)*

All Firms to register with the Board and provide a full list of the matter types and professional practice areas engaged in by their respective practices.

2. *Exemption from Registration by Self-certification (Section 7A(1)(c)) and By-Law 68 and Rules Of Professional Conduct 206)*

Only after registration and production of the matter type information, is a firm then entitled to self-certify that none of its practice areas involves financial or real estate transactions concerning any of the practice areas flagged by the Board as falling within the ambit of

“specified activities”. Self-certification exempts such firm from active supervision only i.e. the firm continues to be **“monitored”** for purposes of SEA but will be treated as equivalent to very low risk. Such firm will remain on the register and is required to self-certify annually.

3. *Inspections of non-registrants in case of Doubt (Section 7A(1)(c)) and By-Law 68 and Rules Of Professional Conduct 206)*

Where any firm fails to register with the Board, it shall be a disciplinary matter for the CPA Professional Conduct Committee. A non-registering firm shall be subject to inspection by the Supervisor in any event, in the presence of a representative of CPA Executive Committee, by way of the collection of evidence in the disciplinary hearing. A refusal to allow inspection shall itself be a disciplinary offence.

4. *Maintenance of Records & Supply of Data to Board (Section 7A(1)(c)) and Rules Of Professional Conduct 218)*

- a. Harmonised Coding of Practice Matters

The Board shall systematize the nomenclature of practice areas and accounting products and shall assign a risk-rated code to each distinct matter type. All Regulated Professional Firms shall maintain records by matter type and annually shall file reports of their activities corresponding to the code names issued by the Board.

- b. Family Trees

Each Regulated Professional Firm shall maintain a record of its group structure, if any, showing all companies or partnerships of which such Regulated Professional Firm is a holding company, subsidiary or affiliate or otherwise in shared ownership or control. Such records shall be provided to the Supervisor on registration and on each occasion when there is a change in such structure. Regulated Professional Firms shall indicate where compliance with the AML Regulations and any requirement of SEA is made on a group basis, and in accordance with what standards.

5. *Screening of Staff (Section 7A(1) – general power to make By-laws and Rules Of Professional Conduct chapters 400 and 500)*

All persons employed by any Regulated Professional Firm to be screened for AML.

6. *Mutual assistance*

Each of Bar Council, CPA and the Board shall appoint a representative who shall together form a committee for the purpose of coordinating interaction and mutual assistance between their respective bodies in relation to AML/ATF, POCA and SEA with a view to directing the individual members of the respective professions as a matter of their professional conduct duties.

Definitions:

Anti-Money Laundering and Anti-Terrorist Financing (“AML/ATF”)

The Proceeds of Crime Act 1997 (“POCA”)

The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (“**SEA**”)