

Newsletter – June 2018

This Newsletter covers the period 1 June 2017 to 1 June 2018

Mutual Evaluation

Bermuda is to be evaluated in October 2018 by assessors from the Caribbean Financial Action Task Force (**CFATF**). This is referred to as a “mutual evaluation”, in that assessor personnel are drawn from a group of jurisdictions who, in turn, evaluate each other. The past 2 years have been dominated by preparations for the mutual evaluation. Major milestones included participating in legal and accounting industry workshops for the National Risk Assessment (referred to in greater detail below) and making written submissions to the National Risk assessment; making submissions for the Technical Compliance component of the mutual evaluation; making submissions for the Effectiveness component of the mutual evaluation; and, planning for the interviews with Board and legal or accounting sector representatives to be interviewed by the assessors. Associated with these submissions were numerous training and advisory sessions with external consultants, other Government and Supervisory agencies and with representatives of the professional firms regulated by the Board (RPF).

Assessors from CFATF will be on Island from the end of September, with interviews beginning in October. The assessors will spend time not only with the Board, but will also visit selected RPFs onsite at their premises. In addition to the advisory sessions conducted by NAMLC for RPFs at Warwick Camp in April 2018, with representatives of CFATF on hand, additional training sessions are planned and RPFs should stand by to receive a programme of interview practice events.

Guidance Notes

In the past two years there have been numerous changes to the Proceeds of Crime Legislation and to other relevant statutes, as well as the introduction of new laws, regulations and targeted sanctions. Accordingly, the Guidance Notes for the Legal and Accounting sectors have been substantially updated. For the past 6 months, drafts have been posted on the Board’s website for review by RPFs. The revisions have also been reviewed by the Minister of Legal Affairs, who has issued a formal letter of approval dated 20 June 2018. A notice will be published in the Gazette before 30 June 2018, whereupon the new Guidance Notes will be “live” and therefore effective as a legal defence for RPFs. RPFs should familiarize themselves with the revised Guidance Notes.

National Risk Assessment

A major aspect of preparing for the CFATF mutual evaluation was to conduct an assessment of the risks and vulnerabilities to money-laundering and terrorist financing faced by Bermuda. This exercise was last carried out in 2013 and was repeated in 2017, with the benefit of Bermuda’s greater experience. Under the aegis of the National Anti-money Laundering Committee, both public and private sectors participated in a series of workshops and written submissions. Much of the data also came by way of responses from RPFs to questionnaires sent out by the Board, often at very short notice. The material gathered was fed into an analytical tool developed by the World Bank to help identify and weigh various types of risks and vulnerabilities. The results of the NRA were released to the public in May 2018. All RPFs will have received an e-mail notice attaching the public version of the NRA report. Particular reference should be

made to the sections of the report which relate to the Legal and Accounting sectors, which are found in Chapters 9 and 10 respectively. If you would like the consolidated report sent to you again, please contact Josh Correia (jcorreia@amlatfboard.bm). A session was held at the Bermuda Bar premises on April 10, 2018 at which time the highlights of the NRA report with respect to the Legal and Accounting sectors was presented and discussed.

The NRA spurred a review of the regulatory regime relating to the legal and accounting sector, and prompted improvements in the collection and analysis of information relating to the nature and activities of regulated firms, particular those operating within a group of local or international firms and ancillary businesses. These were discussed at a Town Hall meeting on 30 November 2017, with further circulation of materials by Bar Council and CPA to their respective members.

Mitigation Questionnaire, Data Calls & Registration Form

Throughout 2017 and 2018 and for the purposes of the NRA and the submissions for the CFATF mutual evaluation, the Board sent requests for information to RPFs, usually in the form of detailed questionnaires and often at very short notice. The Board is highly appreciative of the responsiveness of RPFs to these questionnaires. These data calls also informed thinking on the question of dual regulation with the BMA for those RPFs in common ownership with CSPs. But more generally they assisted the Board to deepen its knowledge of the nature and business of each RPF as contemplated by Section 30C of SEA. Analysis of the data calls encouraged the Board to develop a better understanding of group enterprises, both local and international. Accordingly, the questionnaire for supervisory reviews has been expanded to explore such matters. Further, the registration form to be completed on an annual basis is being fully revised and will call for such information together with a full listing of practice matter types, to be checked against the full ambit of what is understood by “specified activities”.

Harmonized Practice Matter Types

To improve the quality of data collected by the Board in pursuit of its supervisory regime and as mandated by FATF (Recommendation 1 - Assessing risks and applying a risk-based approach) the Board requested Bar Council and CPA to require that their members manage and present practice matter data in a standardized way. Accordingly, Bar Council and CPA have amended their respective Rules and Bye-laws. The new Rules on harmonized matter types to be made under the Bermuda Bar Act 1974 are currently with the Minister of Legal Affairs for approval and adoption during the course of 2018. The CPA Bye-law amendments were approved by CPA members in general meeting on 12 June 2018.

Once the relevant Rules come into force, a regulated professional firm’s client billing matter descriptions will have to correspond to a detailed breakdown of client transactions falling within the concept of “specified activities” for the purposes of the Proceeds of Crime Act 1997, Section 49(5), as such detail is particularized in the FATF Report: “Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals”.

The effect of this new requirement will be that, with exceptions for small firms, RPFs will be required to name and code client files opened according to a “tariff sheet”, and then on an annual basis to supply to the Board by spreadsheet or other data-transfer method a summary of anonymized client activity data. A Town Hall meeting is planned for Managing Partners and Chief Financial Officers of RPFs to discuss the naming/coding system and also to assess the capabilities of

firms' financial reporting systems to capture the required specifics. The exercise is conceptually similar to the way an importer completes a customs declaration, using fixed descriptors of the goods according to the international standard customs tariff coding system. Hence the above use of the words "tariff sheet".

Standardised data will also assist the Board in supplying sectoral statistics to NAMLC as required by FATF (Recommendation 33 – Statistics: Countries should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CFT systems).

Legislation, Bar/CPA Rules – amendments & New Rules

The Chartered Professional Accountants of Bermuda Act 1973 was amended in 2017 to remove the requirement that Board members nominated by CPA should have 5 years "public" accounting experience. This prior limitation reduced the pool of accountants available to serve on the Board. The position now is that any qualified accountant may serve.

Both the Bermuda Bar Act 1974 and the CPA Act are expected to be further amended in consequence of a raft of proposed amendments submitted in May 2018 to the Minister of Legal Affairs. The proposals were made in response to the NRA, as well as to issues identified during the data calls. They are also in pursuit of compliance with the FATF recommendations. It is anticipated that these amendments will come into force later in 2018. The proposed amendments were circulated to firms in April 2018 and represent the most comprehensive overhaul of Bar/CPA regulation in many years. The detail of the amendments was already circulated to RPFs by Bar Council and CPA. However, in summary the new Rules when adopted will relate to:

- 1) Introduction of a "fit and proper person" test to a) enrollment at the Bar; and b) obtaining and renewing a practicing certificate. Corresponding revocation of practicing certificates for persons "not fit and proper" or limitation of practice areas to exclude "specified activities".
- 2) Extensive amendment of the Code of Conduct and the disciplinary rules to include an active role for the Board in initiating disciplinary procedures and to recommending sanctions, whether for breach of AML/ATF rules or for failings in the supervisory process. Integration of the Board's Guidance Notes into the professional practices of RPFs.
- 3) Requiring all independent legal and accounting practitioners to register with the Board, thus enabling the Board to "police the perimeter" of which firms are, in fact, advising in relation to clients who conduct "specified activities". This confirms that the Board monitors the whole of the legal or accounting business of a regulated professional firm and not merely a sub-set of "activities". A moderation of the regulatory regime will be available where strong evidence is provided that firms do not practice in relation to "specified activities". However, all firms will continue to be required to meet certain minimum obligations as registered entities, including supply of statistical data referred to above under the "harmonized matter type" note, with exemptions for small practices.
- 4) Requiring supply of a broad range of information as to ownership, group organization, activities, changes in such activities. Associated powers of investigation.
- 5) Ring-fencing of RPFs from CSPs and TSPs in common ownership, with exemptions for small practices.
- 6) Training and screening of staff employed by RPFs.

7) Establishment of Mutual Assistance Committee between Board, Bar Council and CPA to consider any matter relating to the functioning of the Board, the operation of the various Rules, the statistical information supplied by the RPFs, or generally to the detection and prevention of money laundering or terrorist financing.

Law Firms and CSPs/Dual Regulation

There has been a continuing dialogue between the Board and the Bermuda Monetary Authority on the subject of law and accounting firms in common ownership with a Corporate Service Provider (CSP) or a Trust Services Provider (TSP). The relevant legislation for CSPs crosses confusingly with the definition of specified activities relating to RPFs. Accordingly, questions of dual regulation arise for RPFs. The Board is in the course of resolving any such overlap by way of a Protocol with the BMA as well as proposals for complete ring-fencing of CSP/TSP activity from that of any RPF which may be in common ownership with such CSP/TSP.

NAMLC & Inter-Agency Cooperation

Although the Board is a Bar/CPA private sector sponsored supervisory body for AML/ATF regulation of the legal and accounting sector RPFs, it nevertheless participates actively with the public sector AML/ATF supervisory bodies covering banks, financial companies, insurance companies, real estate brokers and casinos. Accordingly, both the Chairman and the Supervisor take part in monthly meetings of a committee of the various supervisory agencies. The Board likewise contributes to a monthly NAMLC “tracking document” which co-ordinates the activities of Bermuda’s AML/ATF regulators together with NAMLC. The Board has actively contributed research and drafting services to other agencies. Bi-lateral memoranda of understanding with the BMA, FIA and the Superintendent of real Estate have also been signed, whereby the Board will co-operate with those agencies in the event an RPF falls to be investigated by another of the agencies.

Onsite reviews & Supervisory Framework

With the arrival of an Assistant to the Supervisor, a programme of Onsite visits is being planned, beginning in July 2018. The reviews are being made pursuant to the Board’s new risk-based approach, which goes beyond the former compliance-based approach and relies on a risk-weighted evaluation of a number of inputs from RPFs together with rating sheets completed by the Supervisor which analyses firms’ adherence to legal standards as well as their ability to identify and mitigate risks. The final risk-rating of an RPF takes these elements into account together with contextual information from off- and on-site reviews, harmonized matter type reporting and sectoral comparisons. The final risk rating is then relevant for determining the degree and frequency of supervisory monitoring of an RPF.

Town Hall Meetings

Over the past year the Board has held several group meetings with RPFs, referred to as “Town Hall Meetings”. Various presentations were given by Paula Tyndale of NAMLC, Sinclair White of the Financial Intelligence Agency and by Kim Wilson, the Supervisor. Topics included the NRA, the mutual evaluation, suspicious activity reports and proposed changes to the Bar/CPA Rules.

Board Framework Review

In its preparations for the Mutual Evaluation and to ensure the Board was fulfilling its mission to carry out the AML/ATF supervisory function mandated under the Bar Act and the CPA Act as a joint operation of Bar Council and CPA, the Board commissioned a consultant in mid-2017 to review the Board’s structures and processes. In consequence, the Board has

substantially increased its staff and supervisory capabilities. In addition, the Board has commissioned the construction of a database to collect, collate and organize all data relative to regulated firms. Likewise, the Board has fully upgraded its IT systems.

New policies have been adopted relating to operational independence, confidentiality and conflicts of interest, and, in particular, the Board re-emphasizes to RPFs that the Board exercises arms-length regulator status. The anticipated amendments to the Bar Act and its related Rules specifically boost the Board's independent regulatory status by tying in the sanctioning powers under the Proceeds of Crime (Anti-money Laundering and Anti-terrorist Financing Supervision and Enforcement) Act 2008 (**SEA**) with the disciplinary procedures of the Bar Act and related rules, and with the CPA Bye-laws, giving to the Board the ability to act of its own motion to initiate Bar/CPA disciplinary procedures for breaches of AML/ATF rules and also in relation to supervisory interaction between RPFs and the Board, separate and apart from any sanction under SEA.

Amendments to Operating Principles

The Board amended its Operating Principles to include a power to establish independent committees, so as to provide for situations where there is a conflict of interest. The amended Operating Principles have been posted on the Board's website.

Board Members & Activities

The Board is pleased to announce the addition of Tom Miller as an accountant member of the Board. Mr. Miller, a long-time partner of PwC, has joined the Board after retiring from that firm.

Over the last year, the Board has seen several members retire, namely Christine Patton (Chairman), Michelle Wolfe, Adrian Hartnett-Beasley and Robert Blee. The Board thanks them for their service and wishes them the best in their future endeavors.

The Board meets regularly and reports to the Minister of Legal Affairs.

Staff

With the work on the NRA and the Mutual Evaluation taking up much of the time of the Board and the Supervisor, the Board has engaged an Assistant Supervisor to bolster the supervisory regime. The new Assistant Supervisor is Lanan Bascome and, together with the Supervisor, she will be beginning onsite reviews of RPFs over the next few months.

In addition, Joshua Correia, the Junior Compliance Consultant for the Board, has been taken on full-time to assist with the workload the Board is facing with the upcoming mutual evaluation and continuation of the supervisory regime. The Board has also been employing a part time office assistant to help with the filing and production of various documents and other correspondence. Board members themselves have also been actively involved without charge in the many facets of administration and providing other services as required.

Warren Cabral

Chairman

21 June 2018