



BERMUDA

BERMUDA BAR (BARRISTERS AND ACCOUNTANTS
AML/ATF BOARD) RULES 2018

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The Bar Council, in conjunction with the Council of the Chartered Professional Accountants of Bermuda, having obtained the confirmation of the Chief Justice of the Supreme Court of Bermuda, in exercise of the power conferred by section 9A(1)(c) of the Bermuda Bar Act 1974, makes the following Rules:

Preliminary

Citation

1 These Rules may be cited as the Bermuda Bar (Barristers and Accountants AML/ATF Board) Rules 2018.

Interpretation

2 In these Rules—

“the 1974 Act” means the Bermuda Bar Act 1974;

“the 1997 Act” means the Proceeds of Crime Act 1997;

“the 2008 Act” means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

“the 2008 Regulations” means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

“BMA” has the meaning given in section 2(1) of the 2008 Act;

“the Board” means the Barristers and Accountants AML/ATF Board established under section 25A of the 1974 Act;

“Chairman” means the Chairman of the Board;

“CPA Bermuda” means the Chartered Professional Accountants of Bermuda;

“firm” has the meaning given in paragraph (a) of the definition of “firm” under section 2(1) of the 2008 Act;

“regulated professional firm” has the meaning given in section 2(1) of the 2008 Act;

“specified activity” means an activity referred to in section 49(5) of the Proceeds of Crime Act 1997;

“website” means www.amlatfboard.bm.

Application of these Rules

3 These Rules apply to barristers, firms of barristers, and professional companies in independent practice, all of which are referred to in these Rules as firms.

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Provisions Relating to Firms and Regulated Professional Firms

Registration fees

4 An application for registration under section 30C of the 2008 Act must be accompanied by the appropriate registration fee—

- (a) initial registration fee - \$250;
- (b) annual re-registration fee - \$150.

Firms to provide data in standard format

5 (1) For the purpose of performing its functions under the 2008 Act, all firms registered under the 2008 Act must provide information and data requested by the Board in such format, coding and nomenclature as the Board may require.

(2) In order to meet the requirements of formatting, coding and nomenclature, at the time of agreeing to act for a client, firms must record the following information in their financial systems or other database—

- (a) the products and services offered to clients; and
 - (b) the geographical distribution of products, services and clients;
- (3) This rule does not apply to a firm having annual gross revenues of less than \$250,000.

Firms must not participate in specified activities

6 (1) Firms that are not regulated professional firms—

- (a) must not provide legal services to other persons when participating in financial or real property transactions concerning a specified activity;
- (b) must, under regulation 9(1)(b) of the 2008 Regulations, decline to act for a prospective client who is seeking legal services in respect of a specified activity.

(2) If a firm that is not a regulated professional firm does provide the legal services mentioned in paragraph (1), then the firm must report that fact to the Board as soon as practicable.

(3) Under section 2(1) of the 2008 Act in the definition of “regulated professional firm”, a firm participates in a transaction by assisting in the planning or execution of the transaction, or otherwise acting for or on behalf of a client in the transaction.

Supervision of a firm’s corporate service provider business

7 (1) This rule applies to a firm—

- (a) that provides corporate service provider business;
- (b) where the corporate service provider business constitutes more than 10% of the annual gross revenue of the firm’s business; and
- (c) where the annual gross revenue of the firm is more than \$250,000.

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(2) A firm that conducts corporate service provider business that meets the criteria set out in paragraph (1) shall transfer that part of its business to a separate entity within the group structure of the firm for the purpose of the supervision of that entity by the BMA.

(3) In this rule, “corporate service provider business” has the meaning given in section 2(2) of the Corporate Service Provider Business Act 2012.

Supervision of a firm’s business by another supervisory authority

8 (1) This rule applies where—

- (a) some part of the business of a firm may be supervised by more than one supervisory authority, and that part constitutes more than 10% of the gross revenues of the firm; and
- (b) the gross revenues of the firm are more than \$250,000 per annum.

(2) Where, pursuant to section 3(2) of the 2008 Act, the Board has agreed with another supervisory authority that the other authority will act as supervisory authority for that part of the firm’s business referred to in paragraph (1), then the firm shall transfer that part of its business to a separate entity within the group structure of the firm for the purpose of supervision of that entity by the other supervisory authority.

(3) Notwithstanding paragraph (2), a firm may make a request to the Board that paragraph (2) should not apply to it; and the firm shall provide the Board with such information as it requires to determine the request.

(4) Where the Board grants the request, the Board and the other supervisory authority must—

- (a) agree, pursuant to section 3(2) of the 2008 Act, which one of them will act as supervisor of that business of the firm referred to in paragraph (1); or
- (b) cooperate with each other, pursuant to section 3(5) of the 2008 Act, in the performance of their supervisory functions under that Act.

Guidance

9 Where guidance has been issued by the Board pursuant to section 5(2) of the 2008 Act, firms registered under the 2008 Act shall—

- (a) have regard to the guidance;
- (b) supervise and train its employees, as recommended in the guidance; and
- (c) integrate policies and procedures into the professional practice of the firm, as recommended in the guidance.

Provisions Relating to the Board

Informing Council of cancellation of registration

10 Where the Board cancels a firm’s registration pursuant to section 30C(4) of the 2008 Act—

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- (a) the Board shall notify the Bar Council of the cancellation;
- (b) on the day the firm's registration is cancelled—
 - (i) the firm's certificate of recognition ceases to be valid;
 - (ii) the practising certificate of the relevant barrister ceases to be valid; and
- (c) the Board or the Bar Council may, where either considers it appropriate to do so, make a complaint of improper conduct under section 17 of the 1974 Act against the firm and the barrister.

Informing Council of warning notices

11 Where a warning notice has been issued under section 30J(1) of the 2008 Act to a firm that is a regulated professional firm, the Board shall provide a copy of the notice to the Bar Council, and—

- (a) the Bar Council may make representations to the Board within the period specified in the notice; and
- (b) the Board shall take any representations made by the Bar Council into consideration when making its decision.

Board to prepare report

12 (1) The Board shall, for the purpose of analysing risk exposure and risk mitigation, prepare a statistical report of the legal business in Bermuda as at 31 March of each year which sets out the following information—

- (a) products and services offered by firms;
- (b) client types;
- (c) politically exposed persons;
- (d) countries or geographic areas;
- (e) types of transactions or delivery channels.

(2) The Board shall, not later than three months after preparing a report, submit the report to the Minister, and provide copies of the report to—

- (a) the Bar Council;
- (b) CPA Bermuda; and
- (c) the National Anti-Money Laundering Committee.

(3) In this rule, "transaction" means a financial or real property transaction concerning a specified activity.

Statement of Principles

13 The Board shall publish on the website a Statement of the Principles on which it exercises its functions, duties and powers under Part 4A of the 2008 Act.

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Board to function according to Operating Principles

14 (1) In the exercise of its functions, duties and powers under the 2008 Act, the Board shall operate in accordance with the Operating Principles deposited with the Bar Council and CPA Bermuda.

(2) The Board shall deposit the Operating Principles with the Bar Council and CPA Bermuda on the same day; and the Principles come into operation on the day of deposit.

(3) The Board shall provide a copy of the Operating Principles to the Minister.

(4) The Board may publish the official Operating Principles on the website.

Amending Operating Principles

15 (1) The Operating Principles may be amended at a meeting of the Board where the Chairman has—

(a) given to each member of the Board not less than fourteen days notice of such meeting; and

(b) attached to the notice a copy of the proposed amendment.

(2) Where a notice has been given under paragraph (1), the Chairman shall, at the same time, inform each member of the Bar Council and the Board of CPA Bermuda that a notice has been given to each member of the Board, and shall provide to each member a copy of the proposed amendment.

(3) Notwithstanding paragraph (1), where each member of the Board has agreed in writing, the Chairman may call a meeting in less than fourteen days.

(4) The Chairman shall, where a meeting has been called in less than fourteen days, notify members of the Bar Council and the Board of CPA Bermuda that each member of the Board has agreed to such meeting.

(5) At a meeting—

(a) the quorum shall be all members of the Board less one; and

(b) an amendment to the Operating Principles shall be approved by no fewer than three fourths of the members in attendance at the meeting.

(6) Rule 14(2), (3) and (4) applies where the Board has approved an amendment to the Operating Principles.

Establishment of Mutual Assistance Committee

Mutual Assistance Committee established

16 (1) There is hereby established a committee, to be known as the Mutual Assistance Committee, comprising one member each from the Bar Council, CPA Bermuda, and the Board.

(2) The Committee shall meet once in each quarter to consider—

(a) any matter relating to the functioning of the Board;

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- (b) the operation of Rules made under section 9A of the 1974 Act;
 - (c) the report prepared by the Board under rule 12(1); and
 - (d) the detection and prevention, generally, of money laundering and terrorist financing.
- (3) The Mutual Assistance Committee may make recommendations to the Minister—
- (a) in respect of amendments to be made to the 1974 Act, the 2008 Act, and the Chartered Professional Accountants of Bermuda Act 1973;
 - (b) in respect of amendments to be made to Rules or Regulations made under those Acts; and
 - (c) proposing new Rules or Regulations to be made under those Acts.

Commencement

17 (1) Subject to paragraph (2), these Rules come into operation on the day they are published in the Gazette.

(2) Rule 4 and rule 5 of these Rules come into operation on such day as the Bar Council may appoint by notice published in the Gazette.

Made by the Board on this 2nd day of October 2018

Chairman
Bar Council

Secretary

Signed on this 2nd day of October 2018

Chairman of the Board
The Chartered Professional Accountants of Bermuda

Approved on this 2nd day of October 2018

Chief Justice
The Supreme Court of Bermuda

[Operative Date: 04 October 2018]