

November 2021

# Consultation Paper on Proposed Legislative Amendments to the Anti-Money Laundering Legislation

National Anti-Money Laundering Committee  
(NAMLC)

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## INTRODUCTION AND BACKGROUND

### Proposed Amendments to the Proceeds of Crime Act 1997 and the Associated Regulations

1. This Consultation Paper (CP) is submitted to industry, along with the related Draft Bill, to seek feedback on amendments proposed by the Bermuda Monetary Authority, for the purpose of closing some technical gaps, addressing risk-based re-alignment of some in-scope sectors and other miscellaneous matters.
2. The Caribbean Financial Action Task Force (CFATF) published Bermuda's Mutual Evaluation Report (MER) in January 2020, in which it recognised Bermuda's high degree of compliance with the FATF Standards and the effectiveness of our system for combatting ML and TF. Following the mutual evaluation, the CFATF placed Bermuda in the regular follow-up process. This means that Bermuda's first progress report on actions taken to address all recommended actions and deficiencies noted in the MER, is due for presentation at the CFATF's May 2021 Plenary.
3. As part of the Follow-Up process, Bermuda will at some point be subject to automatic re-rating for compliance with Recommendation 15, which deals with New Technologies. Although Bermuda achieved a rating of "compliant" for this Recommendation during the mutual evaluation, FATF has since revised the requirements for this Recommendation and all countries are subject to be re-rated for compliance with new requirements, which came into being after the country's review period.
4. In preparation for this eventuality, Bermuda must take the necessary steps to ensure that the AML/ATF legislative framework and other relevant aspects of the regime are brought into alignment with the additional requirements of Recommendation 15.
5. In addition to Recommendation 15, other areas have been identified by the BMA as requiring remediation or as suitable for a change. Accordingly, all of the proposed amendments are as follows:
  - i. Correct minor deficiencies noted by the MER in relation to the Technical Compliance Assessment
  - ii. Expand coverage for digital assets in the wire transfer regulations in compliance with FATF's revised criteria for Recommendation 15 on New Technologies
  - iii. Based on updated understanding of ML/TF risk, remove a segment of the Insurance Market Place from coverage within the AML/ATF framework
  - iv. Address specific requirements in FATF Recommendation 10, concerning occasional transactions in relation to wire transfers

6. The proposed amendments are to:
  - i. The Proceeds of Crime Act 1997 (POCA); and
  - ii. The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008
  
7. The purpose of this Consultation Paper is therefore to:
  - Advise industry of the proposed amendments
  - Solicit comments from stakeholders on the proposed amendments for areas of potential impact and concern to them

## **PROPOSED LEGISLATIVE AMENDMENTS**

### **A. Amendments to POCA**

#### **Insurance Market Place Providers (IMPPs)**

8. It is proposed that paragraph (d) of the definition of “AML/ATF regulated financial institution” be amended in section 42A(1) in relation to the scope of insurance market place providers (IMPPs) that are subject to AML/ATF regulation. The proposal is to limit the scope to include only providers who engage in activities where the IMPP is acting in connection with long term business (other than reinsurance business).
  
9. As an IMPP's activities within other insurance sub-sectors are low risk for ML/TF, this low level of risk does not warrant the need for the entire IMPP sub-sector to be regulated for AML/ATF purposes.
  
10. This proposed change in scope in relation to this sector is consistent with the approach that has been taken with respect to insurance brokers, as already specified in paragraph (d) of the definition of “AML/ATF Regulated Financial Institution” in section 42A(1) of POCA.
  
11. **THE PROPOSED AMENDMENT: Amend section 42A(1)(d) in POCA to make it clear that the scope of regulation for IMPPs is only where the IMPP is acting in connection with long term business (other than reinsurance business).**

#### **Credit Unions**

12. It is proposed that the definition of “AML/ATF regulated financial institution” be amended in section 42A(1) to add a new paragraph to expressly include credit unions.

13. The activities undertaken by credit unions are required by FATF to be subject to AML/ATF regulation, and are already included in Schedule 3 of POCA. However, this amendment would resolve an anomaly between Schedule 3 and this definition, to reinforce that credit unions are subject to the same regulatory requirements as the other classes of AML/ATF regulated financial institutions that are currently specified in the definition of this term in POCA.
14. **THE PROPOSED AMENDMENT: Amend section 42A(1) to insert a new paragraph (ia) in the definition of AML/ATF Regulated Financial Institution, to expressly include credit unions.**

## **B. Amendments to POCR**

### **Occasional Transactions**

15. It is proposed that the definition of “occasional transaction” in regulation 2 be amended, to specify BMD \$1,000 as the threshold for such transactions either as a single transaction or a series of linked transactions, when carried out by licensed undertakings under the Digital Asset Business Act.
16. This change addresses one of the new requirements added to Recommendation 15, which designates an occasional transaction threshold of USD or EUR 1,000, above which digital asset service providers are required to conduct CDD. In order to bring Bermuda fully into compliance with the new FATF requirements, an amendment to the definition of “occasional transaction” is needed to specify this threshold for digital asset transactions.
17. The amendment will also make it clear that an occasional transaction by a digital asset business constitutes a transaction where no account is used to process it, whether or not at the threshold;
18. In accordance with the requirement in the FATF Methodology in criterion 10.2(b) & (c), the amendment will also make it clear that in the case of wire transfers generally, occasional transactions are transfers where no account is used to process the transaction, which accords with the requirements in Recommendation 16 which deals with Wire Transfers.
19. **THE PROPOSED AMENDMENTS: Amend the definition of “occasional transactions” in Regulation 2 of the POCR, to include a new category which covers transactions carried out by digital asset businesses; and also to include a category specifically for wire transfer transactions, where the transaction is not processed through an account.**

## Digital Asset Business

20. In consequence of the amendments required in Part 4 and elsewhere in the Regulations, the term “digital asset” and “digital asset business” will be included and defined in Regulation 2 by reference to the definition of those terms in the Digital Asset Business Act 2018.
21. **THE PROPOSED AMENDMENT: Amend Regulation 2 in POQR, to define the terms “digital asset” and “digital asset business” cross referencing the existing definitions in section 2(1) of the Digital Asset Business Act 2018 (DAB).**

## Insurance Pay-outs to Politically Exposed Persons

22. It is proposed that a new requirement should be included in Regulation 11(4), which deals with Politically Exposed Persons (PEPs), in relation to long term insurance or other investment-related insurance policies, to make it mandatory for a relevant person to inform senior management of a pending pay-out of a policy to a PEP before the pay-out of the proceeds.
23. The amendment would address a gap identified in the MER in relation to FATF Recommendation 12.
24. The amendment would formalise the directions already enshrined in the BMA's General Guidance Notes (GN) that were issued by the BMA in 2016.
25. **THE PROPOSED AMENDMENT: Amend Regulation 11(4) in POQR, to add a new requirement to make it mandatory for a relevant person to inform senior management of a pending pay-out of policy proceeds to a PEP, before the pay-out. This will apply to long term insurance or other investment-related insurance policies.**

## Wire Transfers

26. It is proposed that Part 4 of POQR be amended to expand coverage to include transfers of funds effected by licensed undertakings under the Digital Asset Business Act.

27. This will specifically address new requirements in Recommendation 15, which mandate countries to ensure that digital asset transfers are subject to the same or similar requirements as stipulated in Recommendation 16, in relation to Wire Transfers. These cover the range of requirements for obtaining, holding and transmitting accurate originator and recipient information.
28. **THE PROPOSED AMENDMENT: In addition to a change to the heading for Part 4 of the POCR, to re-title as “Transfer of Funds”, other consequential amendments are required to ensure that the types of currency or other assets transferred by Digital Asset Businesses will also be covered by the provisions in this part.**

## CONCLUSION & NEXT STEPS

29. Cabinet has given approval for these amendments and accordingly, a draft Bill has been prepared for consultation. The Consultation Draft is attached for consideration and comment from industry stakeholders.
30. **CONFIDENTIALITY:** As this is a Bill in the draft stage, it is imperative that recipients of this consultation package do not circulate more widely beyond the institution(s) to which NAMLC and the BMA has shared it.
31. Given the time sensitive nature of this Bill and also the amount of time remaining in the Parliamentary calendar, timely responsive and an efficient consultative process is imperative.
32. NAMLC therefore seeks the cooperation of industry to review this Consultation Paper and the appended Bill; and should you have any preliminary observations concerning the proposed legislation you may provide written comments and feedback **no later than November 30, 2021** to the email address below:

- i. Via e-mail: [info-NAMLC@gov.bm](mailto:info-NAMLC@gov.bm)

**A BILL**

**entitled**

**PROCEEDS OF CRIME AMENDMENT ACT 2021**

WHEREAS it is expedient to amend the Proceeds of Crime Act 1997 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

**Citation**

1 This Act, which amends the Proceeds of Crime Act 1997, may be cited as the Proceeds of Crime Amendment Act 2021.

**Amends section 42A**

2 The Proceeds of Crime Act 1997 is amended in section 42A(1) in the definition of "AML/ATF regulated financial institution"—

(a) in paragraph (d) by deleting the words "broker, only in so far as he acts as a broker" and substituting "broker or an insurance marketplace provider, only in so far as they act as a broker or a provider";

(b) by inserting the following after paragraph (i)—

"(ia) carries on the business of a credit union within the meaning of section 2 of the Credit Unions Act 2010;".

**Amends BR77/2008**

3 (1) The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended in accordance with this section.

(2) Regulation 2(1) is amended—

(a) by inserting the following definition in its proper alphabetical order—

## PROCEEDS OF CRIME AMENDMENT ACT 2021

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- “digital asset” and “digital asset business” have the meanings given in section 2(1) of the Digital Asset Business Act 2018;”;
- (b) in the definition of “occasional transaction” by inserting the following after paragraph (c)—
- “(d) in the case of a digital asset business, a transaction or series of linked transactions, where a transfer (in any form of currency or digital asset) equivalent to BMD \$1,000 is made, and includes any transaction where no account is used to process the transaction;
- (e) in the case of a transfer of funds, any transfer where no account is used to process the transaction;”.
- (3) Regulation 3(10) is amended by inserting after “funds” the words “or digital assets”.
- (4) Regulation 7(2)(a) is amended by inserting after “funds” the words “or digital assets”.
- (5) Regulation 11(4) is amended—
- (a) in paragraph (b)—
- (i) by inserting after “funds” the words “or digital assets”;
- (ii) by deleting “and” at the last occurrence;
- (b) in paragraph (c) by deleting the full-stop and substituting “; and”;
- (c) by inserting the following after paragraph (c)—
- “(d) inform senior management of a pending payout to a politically exposed person of a long-term insurance or other investment-related insurance policy, before proceeding to pay out the policy.”.
- (6) Regulation 12A(a) is amended by deleting “(Wire Transfers)” and substituting “(Transfer of Funds)”.
- (7) The heading to Part 4 is amended by deleting the words “WIRE TRANSFERS” and substituting “TRANSFER OF FUNDS (INCLUDING WIRE TRANSFERS)”.
- (8) Regulation 21 is amended in the definition of “transfer of funds” by inserting after “person;” the words “and includes the transfer of digital assets;”.
- (9) The Schedule is amended in paragraph 1(f) by inserting after “financial assets” the words “or digital assets”.



## **PROCEEDS OF CRIME AMENDMENT BILL 2021**

### **EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Proceeds of Crime Act 1997 (the “principal Act”) and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

Clause 1 is self-explanatory.

Clause 2 makes an amendment to section 42A (Interpretation) of the principal Act. Paragraph (a) of clause 2 relates to insurance marketplace providers and restricts the scope of AML/ATF regulations to those insurance marketplace providers who act in connection with long-term business (other than reinsurance business). Paragraph (b) includes credit unions within the definition of “AML/ATF regulated financial institution”.

Clause 3 amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 in relation to digital assets, digital asset business, and use of the term “wire transfers”. Specifically, regulation 2 (Interpretation) is amended by the insertion of a definition for “digital asset” and “digital asset business”, and in the definition of “occasional transaction” by including digital asset business and the transfer of funds within the meaning of that term. Regulation 3 (Meaning of beneficial owner) is amended to include digital assets within the meaning of “arrangement”, “entity” and “trust”. Regulation 7 (Ongoing monitoring) is amended in the definition of “ongoing monitoring” of a business relationship to include digital assets in the investigation of transactions by a relevant person. Regulation 11 (Enhanced due diligence) is amended by requiring a relevant person to take measures to establish the source of digital assets of a politically exposed person, and to inform senior management regarding the pending pay out of long-term insurance or other investment-related insurance policies. Regulation 12A (Financial Groups) and the Part 4 heading are amended in relation to the words “wire transfers”. Regulation 21 (Interpretation of Part 4) is amended in the definition of “transfer of funds” to include digital assets in a transaction carried out on behalf of a payer through a PSP by electronic means. The Schedule is amended in paragraph 1(f) to include digital assets in the investment of financial assets or claims in the case of products or related transactions.