



19 October, 2017

The President
The Bermuda Bar Association
2nd Floor, S. E. Pearman Building
9 Par-La-Ville Road
Hamilton HM 11 Bermuda

Dear Madam,

Re: Proceeds of Crime (Anti Money Laundering and Terrorist Financing) Supervision and Enforcement Act 2008 (the “SEA”)

The Board was established pursuant to The Bermuda Bar Act 1974 and the Chartered Professional Accountants of Bermuda Act 1973. It was appointed as a “supervisory authority” for the legal and accounting sectors by the Minister pursuant to Sections 3 and 4 of the SEA. It is directed by Section 5 of the SEA to monitor Regulated Professional Firms and independent professionals as defined in the SEA and the Regulations respectively.

You will have received from the Board a letter dated 1 April 2016 (“Letter”) describing the function of the Board and its remit. The responses the Board has received to the Letter, taken together with the data collected during the Board’s investigations for the purposes of the National Risk Assessment, to be completed in October of this year in advance of the CFATF mutual evaluation in 2018, have been informative. It is clear that an overly simplified approach has been associated with the list of “specified activities” set out at Section 49(5) of the Proceeds of Crime Act 1997 (“POCA”) and that insufficient attention has been paid to the additional provisions of the SEA and the Regulations, where the emphasis in the definition of “Regulated Professional Firm” or “independent professional” is on assisting clients in any way with financial or real estate transactions which may concern any of the “specified activities”. That is to say, that a much more granular, matter by matter analysis and clear understanding of whether work is “transactional” is required, before law firms can excuse themselves from registering with the Board. It is not enough to classify work as simply “corporate” or “trusts” or “property” and to conclude registration is not required if a firm conceives of itself as primarily a “litigation” firm. If there is any kind of “transaction” involving one or more persons and having a financial or real property consequence and such transaction concerns any aspect listed among the “specified activities”, then registration is required. In this regard it is immaterial if a firm is associated with a corporate services provider. Registration of the law firm itself is also required if attorneys of the firm advise on or execute any aspect of such associated work.

In light of the above, the Board has now evaluated the websites of numerous Bermuda law firms and found, for example, that in many cases the dispute resolution teams of such firms offer advice and assistance on matters which are clearly transactional and which touch upon activities falling within Section 49(5). A simple example is debt recovery, where the relationship between debtor and creditor is

a financial transaction and a file opened in such a matter would, in the eyes of this Board, relate to the “managing of client monies, securities and other assets”, being one of the “specified activities” for the purposes of POCA, the SEA and the Regulations. Such a wide interpretation is justified because debt recovery is a classic money laundering typology mentioned in the FATF guidance for lawyers. See Chapter 4, Method 6 of the FATF booklet on Money Laundering and Terrorist Financing -Vulnerabilities of Legal Professionals, typologies 38, 39 and following: <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>

The “eyes of the Board” are important in this regard, because the Board is the arbiter of whether or not a firm falls to be regulated, in that it would be reportable to the Financial Intelligence Agency per Section 5(4) of the SEA as amended by the Proceeds of Crime Amendment Act 2017 as a reasonable ground of suspicion if a firm were to refuse to be registered but yet was seen to offer client services which fell within the definition of “Regulated Professional Firm”. However, that is an entirely unsatisfactory way to proceed and runs contrary to the relationship which ought to exist between a self-regulatory organization and its respective professional members. Accordingly, to clarify the process, two things are under way. The first is that, as we understand, Bar Council has made application to the Minister of Legal Affairs to amend the Bermuda Bar Act 1974 to require all law firms to register with the Board, with exemptions by way only of a self-certification annually. The second is that this Board and Bar Council are in discussion as to the introduction of Rules pursuant to Section 9A of the Bermuda Bar Act 1974, which Rules would settle the form and acceptability of any such self-certification, among other things. An open meeting with Regulated Professional Firms is also proposed for 30 November.

Having said all of the above, the Board has been impressed by the willingness of many firms to provide comprehensive data to assist the Board in understanding the nature of such firm’s business. In future, a granular understanding of a firm’s business, file by file, read against the Regulations and with corresponding mitigation of any risks attached to those files, will demonstrate to the Board a high level of understanding of the drive against money-laundering. This will have a concomitant effect on the risk-ratings to be assigned to each firm once the current round of exercises is complete. A firm’s risk-rating will go to the frequency and extent of on-site inspections and off-site investigations by the Supervisor.

The consequences for Bermuda, its economy and for the legal profession itself of the CFATF mutual evaluation for which we are preparing cannot be under-estimated. A poor rating will damage the attractiveness of the jurisdiction and diminish the legal practices of many of your members. Accordingly, the Board is grateful for the Bar’s continuing support and understanding of the difficult role the Board is obliged to play. With increasing regularity, the Board is faced with fresh interpretations of the requirements of the legislation and further requests from Government bodies (both internal and external) for further information. This, in turn, has increased what the Board must ask of your members.

Yours faithfully,



Warren Cabral

Chairman