



## Anti-Money Laundering Newsletter

### Quarterly News Update – December 2018

#### **Regulatory updates:**

- Bermuda's Economic Substance Act 2018
- BMA consults on digital asset custody
- Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) ministerial advisory 3/2018: Money Laundering (ML) and Terrorist Financing (TF) controls in higher risk jurisdictions
- National Anti-Money Laundering Committee (NAMLC) released a consultation paper on proposed legislative amendments to Bermuda's AML legislation
- Notice to all Dealers In High Value Goods (DIHVG)

#### **Enforcement/administrative actions:**

- Financial Industry Regulatory Authority (FINRA) fines Morgan Stanley USD 10M for AML programme and supervisory failures
- FinCEN assesses USD 14.5M penalty against UBS Financial Services, Inc. (UBSFS) for AML failures
- Tanzanian exchange bureaus raided on suspicion of money laundering

#### **International updates:**

- Legislation passed in British Virgin Islands (BVI) to address European Union (EU) economic substance concerns
- The Bahamas' progress in strengthening its framework to tackle ML and TF risks
- The United Kingdom's measures to combat ML and TF
- EU assists in combating money laundering in region
- Cayman government to introduce digital assets framework

#### **Upcoming conferences/webinars:**

- AML for FinTechs
- Suspicious Activity Reports (SARs) that shine: producing superior SARs
- The truth about false positives and how to reduce them
- Meeting global AML/ATF standards and mitigating emerging financial crime threats
- Managing the AML risks of new payment systems including FinTech and cryptocurrencies

## Regulatory updates

### Bermuda's Economic Substance Act 2018

31 December 2018

The economic substance position has been established through efforts by the European Union to control harmful tax practices, and to secure cooperation from jurisdictions with low or absent rates of commercial revenue. In response to the EU's concerns, as well as a move aimed at keeping Bermuda off any EU list of non-compliant jurisdictions, Bermuda has passed the Economic Substance Act 2018.

Per the [Royal Gazette](#): Bermuda has many thousands of registered companies, and those that have little or no actual presence on the island must now change that situation or face penalties, as prescribed in the Act. To comply with Bermuda's economic substance requirements, a company must be managed and directed from Bermuda and its core income-generating activities be undertaken here. Also, it should have "adequate" premises on the island, and "adequate" expenditure sustained in Bermuda relative to its activity. The level that constitutes "adequate" is to be evaluated by the Registrar of Companies.

Among the other countries and jurisdictions facing the same economic substance matters, and committed to addressing EU's concerns, are Cayman Islands, British Virgin Islands, Jersey and the Isle of Man.

[Full article](#)

### BMA consults on digital asset custody

18 December 2018

The BMA has released a draft code of practice for digital asset custody for consultation that prescribes measures to ensure a high level of care when safeguarding client's assets. The Digital Asset Business Act 2018 makes provision for digital asset business licenses and gives power to the BMA to issue codes of practice to ensure the business is conducted in a prudent manner. The code seeks to protect the public and to clarify the authority's expectations in terms of the custody of digital assets. The code is a detailed document covering both technology and business controls in specific areas like hot and cold storage, key generation, transaction handling, and incident reporting.

Senior advisor, (supervision) financial technology at the BMA, said: "The code complements the extensive body of rules for Digital Asset Businesses published by the BMA. We view custody as an important part of a healthy digital asset ecosystem — one that will encourage quality players to contribute positively to our financial system. We remind stakeholders that the framework was built with the aim of making sure that the core objectives of financial regulation are respected, that is: protecting consumers, ensuring stability of our institutions and maintaining integrity and confidence in financial markets — with a focus on maintaining the highest standards of AML/ATF."

[Full article](#)

### AML/ATF ministerial advisory 3/2018: ML and TF controls in higher risk jurisdictions

26 November 2018

Bermuda's Minister of Legal Affairs issued AML/ATF Advisory 3/2018 about the risks in a number of jurisdictions arising from inadequate systems and controls meant to combat money laundering and terrorist financing.

The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (POCR 2008) require the Bermuda regulated sector and relevant persons to apply enhanced customer due diligence to high-risk countries. The regulated sector and relevant persons are also required to apply enhanced ongoing monitoring on a risk-sensitive basis in certain defined situations and in "any other situation, which by its nature can present a higher risk of money laundering or terrorist financing".

On 19th October, 2018 FATF published two statements identifying jurisdictions with strategic deficiencies in their AML and Counter-Terrorist Financing (CFT) regimes. All financial institutions and relevant persons, in

the implementation of their systems and controls to combat financial crime, should give consideration to the FATF assessments and take appropriate actions in light of the associated risks.

[Full article](#)

### **NAMLC released a consultation paper on proposed legislative amendments to Bermuda's AML legislation**

*22 November 2018*

This paper has been submitted seeking feedback on the Bermuda Government's intention to further update its AML/ATF framework.

Bermuda is in the midst of the 4th Round Mutual Evaluation of its AML/ATF regime. The Assessors are examining Bermuda's regime against the Financial Action Task Force's (FATF) 2012 Recommendations and the 2013 Methodology (as revised up to the time of the Assessment).

In summary, the proposed amendments are as follows:

- extend existing disciplinary measures/penalties, which can be imposed by supervisors on their supervised entities, to be available for breaches of obligations in relation to international sanctions;
- enlarge the list of entities in respect of which a decision to impose a disciplinary measure/penalty can be published to include real estate brokers and agents;
- permit the publication of any decision by a supervisor to impose on a supervised entity any of the disciplinary measures now available in Chapter 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA); and
- clarify that the Financial Intelligence Agency's (FIA) power to make disclosures to the Governor to facilitate the discharge of his statutory functions in relation to international sanctions, will also extend to the authority to whom the Governor may extend any of those functions.

Government therefore intends to amend:

- Chapter 4 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (SEA); and
- Section 18 of the Financial Intelligence Agency Act 2007 (FIAA)

[Full article](#)

### **Notice to all DIHVG**

*14 November 2018*

The term "dealer in high value goods" means jewelry dealers; car, boat and motorcycle dealers; precious metal and stone dealers; antique dealers and auctioneers. The AML/ATF requirements prescribed by POCA 2008 apply to any DIHVG who, by way of business, accepts a total cash payment of BMD \$7,500 or more in a single transaction or series of linked transactions. Any DIHVG who intends to accept such cash payments must register with the FIA before accepting these cash payments.

It is an offence to accept these cash payments if the DIHVG is not registered with the FIA. The penalty for this offence includes fines in addition to imprisonment of 12 months to 5 years.

All DIHVG are reminded of these AML/ATF requirements. Any DIHVG that has not registered with the FIA are prohibited from accepting cash payments as indicated above and should ensure that all of their staff are aware of this prohibition.

[Full article](#)

## **Enforcement actions:**

### **FINRA fines Morgan Stanley USD 10M for AML programme and supervisory failures**

*26 December 2018*

FINRA has fined Morgan Stanley Smith Barney LLC USD 10M for AML programme and supervisory failures that spanned a period of more than five years. It was found that Morgan Stanley's AML programme failed to meet the requirements of the Bank Secrecy Act (BSA) as a result of the following:

- Morgan Stanley's automated AML surveillance system did not receive critical data from several systems;
- The entity failed to devote sufficient resources to review alerts generated by its automated AML surveillance system;
- Their AML Department did not reasonably monitor customers' deposits and trades in penny stock for potential suspicious activity.

FINRA also found that Morgan Stanley failed to establish and maintain a supervisory system reasonably designed to comply with Section 5 of the Securities Act of 1933, which generally prohibits the offer or sale of unregistered securities.

[Full article](#)

### **FinCEN Assesses USD 14.5 Million Penalty against UBSFS for Anti-Money Laundering Failures**

*17 December 2018*

FinCEN announced an assessment against UBSFS for willful violations of the BSA. FinCEN assessed a USD 14.5M civil money penalty, of which USD 5M will be paid to the U.S. Department of the Treasury and the remainder will be concurrent with penalties for similar or related conduct imposed by the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA).

As described in the assessment, UBSFS failed to develop and implement an appropriate, risk-based AML programme that adequately addressed the risks associated with accounts that included both traditional brokerage and banking-like services. Broker-dealers providing banking-like services enable the flow of funds through mechanisms such as wire transfers, check writing, and ATM withdrawals, creating AML risks that need to be properly mitigated. UBSFS failed to implement appropriate policies and procedures to ensure the detection and reporting of suspicious activity through all accounts—particularly for those accounts that exhibited little to no securities trading. The firm did not adequately structure its AML programme to address the use of securities accounts for the purpose of moving funds rather than trading securities.

[Full article](#)

### **Tanzanian exchange bureaus raided on suspicion of money laundering**

*20 November 2018*

Tanzania's central bank conducted a surprise inspection of foreign exchange bureaus in a crackdown on black market currency trading and money laundering. Soldiers and other security forces took part in the operation in the northern town of Arusha, a tourism and gemstone trading hub, wherein different bureaus could be inspected at once. Tanzania has 110 licensed foreign currency bureaus.

The central bank governor stated that "there has been an increase in illegal foreign exchange bureaus and money laundering activities that have been conducted through the bureaus, and the central bank has suspended issuance of new licenses for foreign exchange bureaus over the past three months to conduct thorough inspections of existing foreign exchange retail bureaus".

[Full article](#)

## **International updates:**

### **Legislation passed in BVI to address EU economic substance concerns**

*2 January 2019*

British Virgin Islands (BVI) has passed important legislation which addresses EU's concerns over "economic substance" and came into force from January 1, 2019. The Economic Substance (Companies and Limited Partnerships) Act, 2018, concluded its passage through the House of Assembly on December 19, 2018, which was ahead of the December 31, 2018 deadline set by the EU for the BVI and other financial centres.

The EU is compiling a list of non-cooperative jurisdictions on the basis of certain criteria it has set covering tax transparency, fair taxation and compliance with the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) requirements. As part of this process the EU screened 92 countries in 2017, including large nations such as the US and China.

The BVI has already and continues to respond constructively to the EU's listing exercise. It is expected that the formal response of the EU will not be known for a few months.

The Premier stated, "the international business and financial services sector makes a vital contribution to the economy of the BVI and facilitates cross-border investment and trade to the benefit of the global economy. Dialogue with the industry will continue to ensure smooth implementation of the new requirements and the International Tax Authority is issuing a guidance note to accompany the new Act."

[Full article](#)

### **The Bahamas' progress in strengthening its framework to tackle ML and TF risks**

*20 December 2018*

As a result of Bahamas' progress in strengthening its framework to tackle ML and TF since their 2017 mutual evaluation, the Caribbean Financial Action Task Force (CFATF) has re-rated the country on 13 of the 40 FATF Recommendations.

The Bahamas has been in an enhanced follow-up process, following the adoption of the CFATF mutual evaluation, which assessed the effectiveness of The Bahamas' AML/CFT measures and the country's compliance with the FATF Recommendations. In line with the FATF procedures for mutual evaluations, The Bahamas has reported back to the CFATF on the progress it has made to strengthen its AML/CFT framework. The report analyses The Bahamas' progress in addressing the technical compliance deficiencies identified in the mutual evaluation report.

[Full article](#)

### **The United Kingdom's measures to combat money laundering and terrorist financing**

*7 December 2018*

The FATF has conducted an assessment of the United Kingdom's AML/CFT system. The UK is the largest financial services provider in the world. As a result of the exceptionally large volume of funds that flows through its financial sector, the country also faces a significant risk that some of these funds have links to crime and terrorism. This is reflected in the country's strong understanding of these risks, as well as national AML/CFT policies, strategies and proactive initiatives to address them.

The UK's overall AML/CFT regime is effective in many respects, however needs to address certain areas of weakness, such as supervision and the reporting and investigation of suspicious transactions. The UK aggressively pursues money laundering and terrorist financing investigations and prosecutions, achieving 1400 convictions each year for money laundering. UK law enforcement authorities have powerful tools to obtain beneficial ownership and other information, including through effective public-private partnerships, and make good use of this information in their investigations. However, the UK financial intelligence unit needs a substantial increase in its resources and the suspicious activity reporting regime needs to be modernised and reformed. The UK has been highly effective in investigating, prosecuting and convicting a range of terrorist financing activity and has taken a leading role in designating terrorists at the UN and EU

level. The UK is also promoting global implementation of proliferation-related targeted financial sanctions, as well as achieving a high level of effectiveness in implementing targeted financial sanctions domestically. The country has demonstrated a robust level of understanding of its risks, a range of proactive measures and initiatives to counter the significant risks identified and plays a leading role in promoting global effective implementation of AML/CFT measures.

[Full article](#)

### **EU assists in combating money laundering in region**

*30 November 2018*

The European Union and the CFATF have signed an agreement to enhance the region's capacity to comply with standards relating to anti-money laundering and combating the financing of terrorism.

This will be undertaken via the implementation of a mutual evaluation programme which will evaluate compliance in the financial and related sectors in CFATF member countries, to ensure that international standards are adhered to. One of the main specific actions will be assisting countries in improving their levels of compliance with the international FATF's 40 recommendations, which provide a complete set of counter measures against ML covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation. These recommendations have been recognised, endorsed or adopted by many international bodies.

The project is also expected to undertake a series of workshops and seminars to build technical capacity, carry out public education and awareness activities, and develop an information communication technology platform called Vision 22 which will allow CFATF members to access resource databases.

[Full article](#)

### **Cayman government to introduce digital assets framework**

*20 November 2018*

The Cayman Minister of Financial Services has announced that government favours a regulatory sandbox-type framework for digital assets. The government has agreed that "an adaptable, technology-neutral, regulatory sandbox-type framework" is the best approach for the jurisdiction. The term regulatory sandbox typically describes a "safe space" in which businesses can test new products, services and business models without immediately being subjected to all regulations and licensing requirements.

The approach would welcome new and existing, innovative and pioneering companies but at the same time provide "sufficient oversight and monitoring to ensure the activities taking place are compliant, fair and transparent." It was also stated that the financial services ministry was engaged in the process of resolving the necessary legislative changes to implement a regulatory sandbox framework and actively exploring how regulated digital identification systems could streamline AML compliance.

[Full article](#)

## **Upcoming conferences/webinars:**

### **AML for FinTechs**

*24 January 2019*

This workshop will equip FinTech compliance staff and Anti-Financial Crime (AFC) professionals seeking to work with FinTechs in the future, with the knowledge and skills to build a robust AFC compliance programme.

Topics:

- the types of financial crime risks faced by FinTechs
- the AFC regulatory obligations that may apply to FinTechs

- how to undertake a FinTech financial crime risk assessment
- key components of a FinTech AFC compliance control framework
- real-life financial crime case studies involving FinTechs, illustrating the risks and countermeasures taken

#### [More details](#)

### **SARs that shine: producing superior suspicious activity reports**

*30 January 2019*

SARs are central to effectual AML, and of vital importance to regulatory and law enforcement agencies. This webinar will focus on practical advice for improving SAR quality, from investigating and documenting the suspicious activity to writing insight-filled narratives that serve as a front line in the fight against financial crime.

Learning objectives:

- formulating investigative systems including tools such as data analytics to achieve proper management and resolutions of red flags and alerts
- assembling gathered evidence to document vital supporting details of suspicious activity including who, what, when, where, why and how
- outlining and drafting narrative that is clear, concise, chronological and comprehensive and editing to remove nonessential details and information

#### [More details](#)

### **The truth about false positives and how to reduce them**

*6 February 2019*

False positives are costly, unproductive and can divert precious compliance resources away from managing real AML risks faced by financial institutions. However, while false positives can never be completely eliminated, they can be reduced by effective management, particularly of data collection and verification and well-calibrated monitoring systems. In this webinar, expert panelists will examine the root causes of false positives, while providing practical guidance on how to reduce them while remaining vigilant on risk-based oversight that protects your institutions.

Learning objectives:

- auditing existing internal data quality controls to ensure information is complete, in standardised formats across the enterprise and free of errors or unnecessary duplication
- segmenting customer and transaction data to sharpen systemic focus on most relevant risks and adjust monitoring protocols as warranted for greater accuracy on matches and alert generation
- conducting regular reviews of false positives to analyse root causes of unwarranted false positive volumes and avoid oversight issues such as “alert fatigue”

#### [More details](#)

### **Meeting Global AML/CFT Standards and Mitigating Emerging Financial Crime Threats**

*15 February 2019*

This one-day interactive seminar provides in-depth presentations and discussions covering key areas in AML compliance and financial crime prevention with a focus on issues relevant to compliance professionals in Trinidad and Tobago.

#### [More details](#)

### **Managing the AML risks of new payment systems including FinTech and cryptocurrencies**

*27 March 2019*

FinTechs, cryptocurrencies and Blockchain: They represent financial and technological innovation. But, along with new payment systems comes new risks—and the need for new skills and knowledge by AML professionals who must lead compliance efforts in this new era. Join us for a pragmatic hands-on session focused on mitigating the AML risks posed by these emerging technologies, as well as assessing the implications of their growing role in domestic and global commerce.

Learning objectives:

- beefing up your institution’s AML programme to effectively verify digital identities and monitor FinTech clients to spot potential red flags
- fine-tuning KYC protocols to mitigate risks posed by clients involved in crypto-trading
- avoid common missteps by reviewing and learning from recent enforcement actions related to third-party payment processors (TPPP)

[More details](#)

## Contacts

### Financial crime compliance team



**Rachelle Frisby**  
Partner  
Financial Advisory  
+1 (441) 299 1303  
[rachelle.frisby@deloitte.com](mailto:rachelle.frisby@deloitte.com)



**Sunny Agarwal**  
Manager  
Financial Advisory  
+1 (441) 299 1313  
[sunny.agarwal@deloitte.com](mailto:sunny.agarwal@deloitte.com)



**Michael Wynne**  
Senior Associate  
Financial Advisory  
+1 (441) 299 1383  
[michael.wynne@deloitte.com](mailto:michael.wynne@deloitte.com)



**Christina Rodriguez**  
Senior Associate  
Financial Advisory  
+1 (284) 346 3391  
[christina.rodriguez@deloitte.com](mailto:christina.rodriguez@deloitte.com)



**Brittany Pitcher**  
Associate  
Financial Advisory  
+1 (441) 298 1136  
[brittany.pitcher@deloitte.com](mailto:brittany.pitcher@deloitte.com)

For any feedback/suggestions or if you need help with managing your AML risks, please reach out to us.

 [Get in touch](#)



This is a quarterly newsletter capturing key regulatory AML updates and enforcement actions. This edition covers updates for the months October – December 2018. Any updates beyond this time will be captured in the next edition.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more about our global network of member firms. Deloitte Ltd. is an affiliate of DCB Holding Ltd., a member firm of Deloitte Touche Tohmatsu Limited.

Deloitte provides audit, consulting, financial advisory, risk management, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries bringing world-class capabilities, insights and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 225,000 professionals make an impact that matters, please connect with us on Facebook, LinkedIn or Twitter. This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2019 DCB Holding Ltd. and its affiliates.