

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

BERMUDA BAR AMENDMENT ACT 2018

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WHEREAS it is expedient to amend the Bermuda Bar Act 1974, and to make related amendments to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, and the Supreme Court Act 1905;

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:

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### Citation

1 This Act, which amends the Bermuda Bar Act 1974 (the “principal Act”), may be cited as the Bermuda Bar Amendment Act 2018.

### Amends section 1

2 The principal Act is amended in section 1 by inserting the following definitions in their proper alphabetical order—

““director”, “controller” and “senior executive”” shall, with the necessary modifications, be construed in accordance with the provisions of section 11B of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

“fit and proper person certificate” means a certificate issued by the Bar Council pursuant to section 10E;”.

### Amends section 9

3 The principal Act is amended in section 9(1)—

(a) by inserting the following after paragraph (a)—

“(aa) regulating in respect of any matter the duties and conduct of barristers or registered associates with respect to the Barristers and Accountants AML/ATF Board, but such rules shall not be inconsistent with the provisions of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 or the AML/ATF Regulations;”;

(b) in paragraph (bb)(iii) by inserting after “companies” the words “, including the duties and conduct of professional companies with respect to the Board, but such Rules shall not be inconsistent with the provisions of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 or the AML/ATF Regulations”.

### Amends section 10

4 The principal Act is amended in section 10(3)—

(a) in paragraph (f) by deleting the word “and”;

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

“(fa) the Council has issued to him a fit and proper person certificate within the period of ninety days immediately preceding the date on which he applies for a practising certificate; ”;

(c) in paragraph (g)—

(i) in the introduction by inserting before “he” the words “with respect to insurance,”;

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- (ii) in subparagraph (iii) by deleting the full-stop and substituting “; and”;
- (d) by inserting the following after paragraph (g)—
  - “(h) with respect to the Barristers and Accountants AML/ATF Board, he provides evidence that—
    - (i) he is registered with the Board as required by section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
    - (ii) the firm of barristers of which he is a partner or employee is registered with the Board as required by section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or
    - (iii) the professional company of which he is a member or an employee is registered with the Board as required by section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.”.

Amends section 10A

- 5 The principal Act is amended in section 10A—
- (a) in subsection (1) by inserting after “bankrupt” the words “or in respect of whom a fit and proper person certificate discloses matters which in the discretion of the Council warrant the imposition of limitations”;
  - (b) by repealing and replacing subsection (2) with the following—

“(2) Upon the holder of a practising certificate that is subject to limitations—

    - (a) being discharged from bankruptcy; or
    - (b) producing evidence satisfactory to the Council that any conviction has been expunged or has elapsed by operation of time,

the limitations shall cease to apply.”.

Inserts section 10CA

- 6 The principal Act is amended by inserting the following after section 10C—
- “Limitations regarding specified activities
- 10CA (1) The holder of a practising certificate that is subject to limitations may not assist in the planning or execution of a transaction or otherwise act for or on behalf of a client in a transaction concerning a specified activity.
- (2) For the purposes of subsection (1), “specified activities” means the activities referred to in section 49(5) of the Proceeds of Crime Act 1997.”.

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Inserts sections 10E, 10F and 10G

7 The principal Act is amended by inserting the following after section 10D—

“Fit and proper persons

10E (1) Every Barrister and registered associate, and every shareholder, controller, director and senior executive who exercises control of a professional company, must be a fit and proper person to engage in the practice of law.

(2) On an application to the Council for a fit and proper person certificate by a person who wishes to engage in the practice of law, the Council shall determine whether that person is a fit and proper person, and in making that determination, the Council shall act fairly and in good faith in respect of each person.

(3) In determining whether a person is a fit and proper person, the Council shall, with a view to protecting the interests of clients, potential clients and the public, and in the interest of protecting the integrity of the profession as a whole, shall have regard to the matters set out in subsections (4), (5) and (6).

(4) The Council shall consider the previous conduct and activities in business or financial matters of the person, and shall have regard in particular to—

- (a) evidence that the person has been convicted by a court of a criminal offence—
  - (i) for which the person received a custodial or suspended sentence;
  - (ii) involving dishonesty, fraud, perjury or bribery;
  - (iii) associated with obstructing the course of justice;
  - (iv) associated with money-laundering or terrorism;
- (b) evidence that the person has been convicted by a court of more than one criminal offence;
- (c) material evidence that the person has been responsible for behaviour which—
  - (i) is dishonest or violent;
  - (ii) involves a misuse of any position to obtain a pecuniary advantage;
  - (iii) involves a misuse of any position of trust;
  - (iv) demonstrates that the person cannot be relied upon to discharge his financial duties as a barrister;
- (d) the regulatory history of the person, in particular whether the person—

- (i) has been made the subject of a serious disciplinary finding, sanction or action by any regulatory body, court or other body hearing appeals in relation to disciplinary or regulatory findings;
  - (ii) has failed to disclose information to a regulatory body when required to do so, or has provided false or misleading information;
  - (iii) has significantly breached the requirements of a regulatory body;
  - (iv) has been refused registration by a regulatory body;
  - (v) has failed to comply with reasonable requests of a regulatory body;
  - (vi) has, within the preceding five years, been rebuked, reprimanded or received a warning about his conduct by a regulatory body;
- (d) matters relating to the operation of companies, trusts, and legal arrangements, in particular whether the person—
- (i) has been removed or disqualified as a company director or trustee;
  - (ii) is or was a shareholder, controller, director or senior executive of a body corporate which has been the subject of a winding up order or receivership order, or has otherwise been wound up or put into receivership or administration in circumstances of default on any debt or insolvency.

(5) A person shall disclose if he has received a police caution for any of the matters referred to in subsection (4) and, to the extent such caution amounts to an admission of guilt, the Council shall consider the caution in like manner as a conviction for the purposes of that subsection.

(6) Notwithstanding that the Council shall have regard to the evidence and matters set out in subsections (4) and (5), it shall also have regard to any relevant exceptional circumstances when making a determination under this section.

(7) For the purposes of making its determinations, the Council shall be empowered to commission the production of research and reports from any third party appearing to the Council to be properly qualified to do so, and to rely upon such research and reports for the purpose of issuing a fit and proper person certificate.

(8) The Council may make a determination upon an application for enrolment being made under section 52 of the Supreme Court Act 1905, or upon the application of any person who proposes the candidacy of any such applicant for enrolment at the Supreme Court.

(9) The Council shall make its determination within a period of not more than thirty days from the date of an application made by the person under this section.

(10) Where it has determined that a person is a fit and proper person to engage in the practice of law, the Council shall not more than five days thereafter issue to the person a fit and proper person certificate in such form as it shall determine.

(11) For the avoidance of doubt, in making a determination under this section the Council shall not have regard to any criminal conviction that has been spent in accordance with the Rehabilitation of Offenders Act 1977.

#### Practising certificate invalidated on conviction

10F (1) If a barrister who holds a practising certificate issued under section 10 is convicted of an indictable offence, the practising certificate shall cease to be valid.

(2) A barrister who is convicted of an indictable offence shall immediately give notice in writing of that fact to the Bar Council.

(3) A barrister whose practising certificate has ceased to be valid under subsection (1) may, with leave of the Court, make an application under section 10 for a new practising certificate.

#### Appeals

10G (1) A person who is aggrieved by the determination of the Council under section 10E may appeal to the Supreme Court against such determination within one month of being notified by the Council.

(2) Section 13, and any rules referred to in that section that apply to an appeal by a barrister in relation to a practising certificate, apply, with any necessary modifications, to an appeal under this section by a person in relation to a fit and proper person certificate.

(3) The determination of the Supreme Court is final.”.

#### Amends section 12

8 The principal Act is amended in section 12—

(a) by repealing and replacing subsection (1) with the following, and inserting subsection (1A)—

“(1) Notwithstanding section 10, the Council on application in writing by a barrister specially admitted in such form as the Council may determine and on payment of such fee as may be prescribed by rules, shall issue to the applicant a special practising certificate for the particular case or series of cases in respect of which the applicant is specially admitted if the Council is satisfied—

(a) upon a certificate accompanying the application, issued within the preceding ninety days of the application by the relevant authority

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in the jurisdiction of legal practice of the barrister, attesting in all material respects to the matters referred to in section 10E; and

- (b) that the barrister possesses a current and valid permit issued under the Bermuda Immigration and Protection Act 1956 entitling him to engage in gainful occupation in Bermuda as a barrister.

(1A) The Council may issue a special practising certificate subject to the limitations referred to in section 10CA.”.

Amends section 14

9 The principal Act is amended in section 14(3) by inserting after “qualifications of such person” the words “, a fit and proper person certificate,”.

Amends section 16

10 The principal Act is amended in section 16—

- (a) in paragraph (c) by deleting the word “or”;
- (b) by inserting the following after paragraph (c)—

“(ca) upon the registered associate being convicted of an indictable offence; or”.

Amends section 16B

11 The principal Act is amended in section 16B—

- (a) in subsection (1)—
  - (i) by inserting the following after paragraph (f)—

“(fa) every person who is a shareholder, controller, director or senior executive of the company has a valid fit and proper person certificate;”

- (ii) in paragraph (h) by deleting the word “and” at its last occurrence;
  - (iii) by inserting the following after paragraph (h)—

“(ha) the company must be registered with the Barristers and Accountants AML/ATF Board in accordance with section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; and”;

Amends section 16D

12 The principal Act is amended in section 16D by inserting the following after subsection (2)—

“(2A) The Council shall revoke a certificate of recognition if—

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- (a) the professional company fails to register with the Barristers and Accountants AML/ATF Board in accordance with section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or
- (b) a shareholder, director, controller or senior executive, who exercises control of the company is convicted of an indictable offence.”.

Amends section 17

13 The principal Act is amended in section 17—

- (a) in subsection (1)—
  - (i) in paragraph (ca) by deleting the word “or”;
  - (ii) by inserting the following after paragraph (ca)—
    - “(cb) fails to comply with any requirement imposed—
      - (i) under section 5 or Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or
      - (ii) by the Barristers and Accountants AML/ATF Board acting in the performance of its functions under section 5 or Part 4A of that Act; or”;
- (b) in subsection (3)—
  - (i) in paragraph (c) by deleting the word “or”;
  - (ii) in paragraph (ca) by deleting the full-stop and substituting the word “; or”;
  - (iii) by inserting the following after paragraph (ca)—
    - “(d) fails to comply with any requirement imposed—
      - (i) under section 5 or Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or
      - (ii) by the Barristers and Accountants AML/ATF Board acting in the performance of its functions under section 5 or Part 4A of that Act.”.

Amends section 21

14 The principal Act is amended in section 21—

- (a) by inserting the following after subsection (3)—



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“(3A) The Barristers and Accountants AML/ATF Board may on its own motion make a complaint directly to the Committee of any matter relating to the conduct of a barrister, professional company or registered associate arising in connection with Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 or with the AML/ATF Regulations.”;

(b) in subsection (4) by inserting after “Council” the words “or the Board”.

### Amends section 24

15 The principal Act is amended in section 24(1) by inserting after “struck off the Roll” the words “and who provides a fit and proper person certificate issued within the period of ninety days immediately preceding the date of the application”.

### Amends section 24A

16 The principal Act is amended in section 24A(1) by inserting after “removed from the Register of Associates” the words “and who provides a fit and proper person certificate issued within the period of ninety days immediately preceding the date of his application”.

### Amends section 25A

17 The principal Act is amended in section 25A(1) by inserting after “section 5” the words “and Part 4A”.

### Amends section 25C

18 The principal Act is amended in section 25C(2)—

- (a) in paragraph (a) by inserting after “compliance with” the words “the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and”;
- (b) in paragraph (c) by inserting after “compliance with” the words “the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and”;
- (c) in paragraph (d) by inserting after “non-compliance with” the words “the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and”;
- (d) in paragraph (e) by inserting after “firms with” the words “the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and”.

### Amends section 30

19 The principal Act is amended in section 30(2) by inserting after “suspended from practice” the words “and who provides a fit and proper person certificate issued within the period of ninety days immediately preceding the date of his application”.

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Amends the Proceeds of Crime (AML/ATF Supervision and Enforcement) Act 2008  
20 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing  
Supervision and Enforcement) Act 2008 is amended—

- (a) in section 30B(1) by deleting the words “regulated professional”;
- (b) in section 30C—
  - (i) in the heading by deleting “regulated professional”;
  - (ii) in subsection (1)—
    - (A) by deleting the words “regulated professional”;
    - (B) by inserting after “designated professional body” the word “annually”;
  - (iii) in subsection (2) by deleting the words “regulated professional”;
  - (iv) by inserting the following after subsection (2)—

“(3) The designated professional body shall make a determination from the information provided to it under subsections (1) and (2), whether or not a firm is a regulated professional firm for the purposes of section 5 and this Part.

(4) If after registration it becomes apparent to the designated professional body that a person who is not a fit and proper person is or has become a shareholder, director, controller or senior executive exercising control of the firm, then the body shall require the firm to exclude such person as a shareholder, director, controller or senior executive of that firm.

(5) A designated professional body may cancel the registration of a firm in the manner provided for in section 13, with appropriate modifications, where—

- (a) a firm has failed to exclude a shareholder, director, controller or senior executive who is not a fit and proper person as required under subsection (4); or
- (b) any of the matters mentioned in section 12, with appropriate modifications, apply to a firm.”.

Amends the Supreme Court Act 1905

21 The Supreme Court Act 1905 is amended—

- (a) in section 1 by inserting the following definition in its proper alphabetical order—

“fit and proper person certificate” means a certificate issued by the Bar Council pursuant to section 10E of the Bermuda Bar Act 1974;”;
- (b) in section 52(c)—
  - (i) in subparagraph (i) by deleting the word “and” at its last occurrence;

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(ii) by inserting the following after subparagraph (i)—

“(ia) a fit and proper person certificate; and”;

(c) in the proviso by deleting the words “any of the aforementioned formalities” and substituting “the formalities mentioned in subparagraphs (i) and (iii)”;

(d) by repealing and replacing section 57 with the following—

“Striking off the role and suspension from practice

57 (1) The Court shall have power to—

(a) suspend, for reasonable cause, any barrister or attorney from practising within Bermuda during any specified period, or to order his name to be struck off the Roll of the Court;

(b) order the name of a barrister or attorney to be struck off the Roll of the Court in the event that such barrister or attorney is convicted of an indictable offence.

(2) Nothing in subsection (1) shall authorize the Court to—

(a) strike off the Roll of the Court the name of a barrister and attorney on the grounds that such barrister and attorney is guilty of improper conduct for the purposes of the Bermuda Bar Act 1974;

(b) suspend a barrister and attorney on the grounds that such barrister and attorney is, or may be, guilty of improper conduct for the purposes of the Bermuda Bar Act 1974 other than pending the institution, prosecution and determination of disciplinary proceedings under that Act.”.

Commencement

22 This Act comes into operation on such date as the Minister responsible for legal affairs may appoint by notice published in the Gazette, and different dates may be appointed for different sections.

## BERMUDA BAR AMENDMENT ACT 2018

### EXPLANATORY MEMORANDUM

This Bill seeks to amend the Bermuda Bar Act 1974 (the “principal Act”) for the purpose of further mitigating and managing the risk to Bermuda of money laundering and terrorist financing in the legal sector, and to make related amendments to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, and the Supreme Court Act 1905.

Clause 1 is self explanatory.

Clause 2 amends section 1 of the principal Act by inserting a definition for “director, controller and senior executive”. It also inserts a definition for “fit and proper person certificate” which is to be issued by the Bar Council (“the Council”).

Clause 3 amends section 9 of the principal Act by providing for the Council to make rules regulating the duties and conduct of barristers, registered associates, and professional companies with respect to the Barristers and Accountants AML/ATF Board (“the Board”).

Clause 4 amends section 10 of the principal Act by requiring a barrister who applies to the Council for a practising certificate to provide a fit and proper person certificate with his application. Section 10 will also require a barrister to register with the Board pursuant to Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (the “2008 Act”) in order to be issued with a practising certificate, and for the firm of which he is a partner or an employee, or the professional company of which he is a member, to be so registered.

Clause 5 amends section 10A of the principal Act by providing for limitations on a practising certificate to cease to apply where the holder provides evidence to the Council that any conviction has been expunged or has elapsed by operation of time.

Clause 6 amends the principal Act by inserting section 10CA which provides that where a barrister whose practising certificate is subject to limitations in respect of the specified activities mentioned in section 49(5) of the Proceeds of Crime Act 1997, that barrister shall not assist in the planning or execution of a transaction or otherwise act for or on behalf of a client in a transaction concerning a specified activity.

Clause 7 amends the principal Act by inserting sections 10E, 10F and 10G.

Section 10E provides for every barrister and registered associate, and every shareholder, controller, director and senior executive who exercises control of a professional company to be fit and proper persons to engage in the practice of law, and for those persons to apply to the Bar Council for a fit and proper person certificate. Section 10E also provides matters which the Council shall have regard to in making its determination. These include evidence of conviction of certain criminal offences, cautions by the police, breaches of regulatory requirements, the manner in which companies and trusts have been operated, as well as any exceptional circumstances relating to any of those matters. The Council may

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commission reports from persons who are qualified to provide information in this regard, and shall issue a certificate where an applicant is a fit and proper person to engage in the practice of law.

Section 10F provides for a barrister's practising certificate to cease to be valid upon his conviction of an indictable offence; for a barrister to give notice of his conviction to the Council; and if the barrister wishes to apply for a practising certificate to do so with leave of the Court.

Section 10G provides for a barrister who is aggrieved by a determination of the Council with respect to his fit and proper person certificate to appeal to the Supreme Court, and for the Court's determination to be final.

Clause 8 amends section 12 of the principal Act to require a barrister who applies to the Council for a special practising certificate to provide a certificate with his application, issued by the relevant authority in the jurisdiction of his legal practice, attesting to the matters referred to in section 10E respecting fit and proper person; and for the Council to issue a special practising certificate subject to the limitations referred to in section 10CA, if necessary.

Clause 9 amends section 14 of the principal Act by requiring a person who is applying to the Council for registration as an associate to provide a fit and proper person certificate with his application.

Clause 10 amends section 16 of the principal Act by providing for the Registrar to remove the name of a registered associate from the Register if he is convicted of an indictable offence.

Clause 11 amends section 16B of the principal Act by requiring a person who is a shareholder, director, controller or senior executive who exercises control of a professional company to have valid fit and proper person certificates; and for the company to be registered by the Board pursuant to section 30C of the 2008 Act.

Clause 12 amends section 16D of the principal Act by providing for the Council to revoke the certificate of recognition of a professional company where the company has failed to register with the Board pursuant to section 30C of the 2008 Act, of where a shareholder, director, controller or senior executive who exercises control of the company, commits an indictable offence.

Clause 13 amends section 17 of the principal Act by providing for it to be improper conduct for a barrister, registered associate, or professional company to fail to comply with any requirement imposed under section 5 or Part 4A of the 2008 Act, or imposed by the Board in the performance of its functions under section 5 or Part 4A of that Act.

Clause 14 amends section 21 of the principal Act by providing for the Board to make a complaint directly to the Professional Conduct Committee of any matter relating to the conduct of a barrister, professional company, or registered associate arising in connection with Part 4A of the 2008 Act.

Clause 15 amends section 24 of the principal Act by requiring a barrister who has applied to the Council for his name to be restored to the Roll of the Court or for his

disqualification to be terminated to provide a fit and proper person certificate with his application.

Clause 16 amends section 24A of the principal Act by requiring a registered associate who has applied to the Council for his name to be restored to the Register or for his suspension to be terminated to provide a fit and proper person certificate with his application.

Clause 17 amends section 25A of the principal Act to clarify that in addition to the powers and duties under section 5 of the 2008 Act, the Board has the powers and duties conferred by Part 4A of the 2008 Act.

Clause 18 amends section 25C of the principal Act by adding the 2008 Act to the scope of the duties of the Supervisor.

Clause 19 amends section 30 of the principal Act by providing for a disqualified person who applies for permission to engage or be employed in any legal practice to provide a fit and proper person certificate with his application.

Clause 20 makes related amendments to Part 4A of the 2008 Act by (a) providing for a designated professional body to establish and maintain a register of “firms” (presently the body shall establish and maintain a register of “regulated professional firms”); (b) requiring all firms to be registered with the designated professional body annually; (c) providing for the designated professional body to make a determination as to which of those firms are regulated professional firms for the purposes of the 2008 Act; (d) providing for the designated professional body to require a regulated professional firm to exclude from the firm a shareholder, controller, director, or senior executive who is exercising control of the firm, if that person is not a fit and proper person; and (e) providing the matters for which a designated professional body shall cancel a firm’s registration.

Clause 21 makes related amendments to the Supreme Court Act 1905 by (a) amending section 1 of that Act by inserting a definition of “fit and proper person certificate”; (b) amending section 52 by requiring a person to provide a fit and proper person certificate issued by the Bar Council when applying to be admitted and enrolled to practice as a barrister and attorney in the courts of Bermuda; and (c) repealing and replacing section 57 which provides for the Court, in a newly inserted subsection (1)(b), to order that the name of a barrister or attorney be struck off the Roll of the Court in the event he is convicted of an indictable offence.

Clause 22 provides for this Act to come into operation by notice published in the Gazette by the Minister responsible for legal affairs, and for the appointment of different dates for different provisions.