

A BILL

entitled

PROCEEDS OF CRIME (MISCELLANEOUS) (NO. 2) ACT 2018

TABLE OF CONTENTS

1	Citation
2	Amends the Proceeds of Crime Act 1997
3	Amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008
4	Amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008
5	Amends the Anti-Terrorism (Financial and Other Measures) Act 2004
6	Amends the Insurance Act 1978
7	Consequential amendment
8	Transitional provision
9	Commencement

WHEREAS it is expedient to amend the Proceeds of Crime Act 1997, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, the Anti-Terrorism (Financial and Other Measures) Act 2004 to ensure that all persons carrying on the business of providing certain specified financial activities (including lending, leasing and provision of financial guarantees) will be regulated under those enactments; to amend the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to add a reference to CFATF; and to make a related amendment to the Insurance Act 1978;

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 may be cited as the Proceeds of Crime (Miscellaneous) (No. 2) Act 2018.

PROCEEDS OF CRIME (MISCELLANEOUS) (NO. 2) ACT 2018

Amends the Proceeds of Crime Act 1997

2 (1) In section 42A(1) of Proceeds of Crime Act 1997, at the end of the definition of “AML/ATF regulated financial institution”, insert—

“(j) carries on for or on behalf of a customer the business of providing any of the financial activities specified in Schedule 3;”.

(2) The Schedule to this Act is inserted as Schedule 3 to the Proceeds of Crime Act 1997.

Amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008

3 In section 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, delete the definition of “AML/ATF regulated financial institution” and substitute—

“ “AML/ATF regulated financial institution” has the meaning given in section 42A(1) of the Proceeds of Crime Act 1997;”.

Amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008

4 (1) In regulation 2 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008—

(a) delete the definition of “AML/ATF regulated financial institution” in paragraph (1) and substitute—

“ “AML/ATF regulated financial institution” has the meaning given in section 42A(1) of the Proceeds of Crime Act 1997;”;

(b) revoke paragraph (2).

(2) In regulation 11 of those Regulations, at the end of paragraph (1)(aa), insert “or the Caribbean Financial Action Task Force”.

Amends the Anti-Terrorism (Financial and Other Measures) Act 2004

5 In section 2 of the Anti-Terrorism (Financial and Other Measures) Act 2004—

(a) delete the definition of “AML/ATF regulated financial institution” and substitute—

“ “AML/ATF regulated financial institution” has the meaning given in section 42A(1) of the Proceeds of Crime Act 1997;”;

(b) in the definition of “insurer”, after “AML/ATF regulated financial institution”, insert “in section 42A(1) of the Proceeds of Crime Act 1997.”

PROCEEDS OF CRIME (MISCELLANEOUS) (NO. 2) ACT 2018

Amends the Insurance Act 1978

6 (1) In section 19 of the Insurance Act 1978 (prohibition of non-insurance business being carried on by insurers), delete “no Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer” and substitute “no insurer”.

(2) This section comes into operation on 1 January 2019.

Consequential amendment

7 In section 2 of the Charities Act 2014, in the definition of “AML/ATF regulated financial institution”, delete “Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008”, and substitute “Proceeds of Crime Act 1997”.

Transitional provision

8 (1) In this section, the “transitional period” means the period of three months beginning on the commencement date appointed under section 9.

(2) Any person who, immediately before the commencement date, is carrying on for or on behalf of a customer the business of providing any of the financial activities set out in Schedule 3 to the Proceeds of Crime Act 1997 (as inserted by section 2) may continue to carry on such business during the transitional period, provided that before the end of the transitional period such a person registers as required by section 9 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

Commencement

9 Apart from section 6, this Act come into operation on such day as may be appointed by the Minister responsible for justice by notice in the Gazette.

SCHEDULE

(Section 42A(1))

“SCHEDULE 3
SPECIFIED FINANCIAL ACTIVITIES

Financial activities

1 The following financial activities are specified for the purposes of paragraph (j) of the definition of an AML/ATF regulated financial institution in section 42A(1)—

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending, including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting);
- (c) financial leasing but not including consumer products;
- (d) money or value transfer services;
- (e) issuing and managing means of payment (including credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts and electronic money);
- (f) financial guarantees and commitments, not including financial guarantee insurance which is insurance business under the Insurance Act 1978;
- (g) trading in—
 - (i) money market instruments (including cheques, bills, certificates of deposit and derivatives);
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index instruments;
 - (iv) transferable securities; or
 - (v) commodity futures trading;
- (h) participation in securities issues and the provision of financial services related to such issues;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities;
- (k) otherwise investing, administering or managing funds or money;
- (l) underwriting and placement of life insurance and other investment related insurance; and
- (m) money and currency changing.

Exceptions

2 The following are not “financial activities” for the purposes of paragraph (j) of the definition of an AML/ATF regulated financial institution in section 42A(1)—

- (a) the provision of the services of collecting, administering and disbursing service, damage or maintenance charges (however described) in connection with immovable property situated in Bermuda;
- (b) the provision of any of the activities set out in paragraph 1 when made intra-group or with or on behalf of an affiliated company by—
 - (i) a holding company to a subsidiary company of that holding company;
 - (ii) a subsidiary company of a holding company to the holding company;
 - (iii) a subsidiary company of a holding company to another subsidiary company of that holding company;
- (c) the provision of activities that constitute ancillary business to an insurer’s insurance business as permitted under section 19 of the Insurance Act 1978; or
- (d) the provision of the services of taking sales and rental deposits by real estate brokers licensed under the Real Estate Brokers’ Licensing Act 2017.

Interpretation

3 For the purposes of paragraph 2(b)—

- (a) “subsidiary company” has the meaning given in section 86(1) of the Companies Act 1981;
- (b) “holding company” has the meaning given in section 86(2) of that Act;
- (c) “affiliated”, in relation to a company, has the meaning given in section 86(3) of that Act.”

PROCEEDS OF CRIME (MISCELLANEOUS) (NO. 2) BILL 2018

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Proceeds of Crime Act 1997, and other related enactments which govern the regulation of financial institutions for the purposes of anti-money laundering and anti-terrorist financing, to ensure that all persons carrying on the business of providing certain specified financial activities (including lending, leasing and provision of financial guarantees) will be regulated under those enactments, and to make a related amendment to the Insurance Act 1978.

Clause 1 is the citation.

Clause 2 subsection (1) amends the definition of “AML/ATF regulated financial institution” in section 42A(1) of the Proceeds of Crime Act 1997 (“POCA”) by adding a new paragraph (j) to include persons providing any of the financial activities specified in Schedule 3, inserted by subsection (2). The new activities to be regulated under the AML/AFT regime include lending, leasing, money transfer, guarantees, portfolio management, investments, money changing etc.

Clause 3 amends section 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, to delete the definition of “AML/ATF regulated financial institution” (which mirrors the one in section 42A(1) of POCA) and substitute a definition which imports the revised POCA definition.

Clause 4 subsection (1) paragraph (a) amends regulation 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, to delete the definition of “AML/ATF regulated financial institution” (which mirrors the one in section 42A(1) of POCA) and substitute a definition which imports the revised POCA definition. Paragraph (b) makes a consequential amendment. Subsection (2) amends regulation 11(1) (aa) of those Regulations (enhanced due diligence measures required when dealing with customers from higher risk countries identified by FATF) to insert a reference to the Caribbean Financial Action Task Force.

Clause 5 paragraph (a) amends section 2 of the Anti-Terrorism (Financial and Other Measures) Act 2004, to delete the definition of “AML/ATF regulated financial institution” (which mirrors the one in section 42A(1) of POCA) and substitute a definition which imports the revised POCA definition. Paragraph (b) makes a consequential amendment.

Clause 6 amends section 19 of the Insurance Act 1978 to extend from certain classes of insurer to all insurers the prohibition on carrying out non-insurance business (unless such business is ancillary to an insurer’s insurance business). This section will come into operation on 1 January 2019.

Clause 7 makes a consequential amendment to section 2 of the Charities Act 2014.

Clause 8 provides a three-month transitional period for compliance by persons providing any of the financial activities specified in Schedule 3 to the Proceeds of Crime Act 1997 (as inserted by section 2).

PROCEEDS OF CRIME (MISCELLANEOUS) (NO. 2) BILL 2018

Clause 9 provides for commencement.