

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

PROCEEDS OF CRIME (MISCELLANEOUS) (NO. 4) ACT 2018

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WHEREAS it is expedient to amend the Proceeds of Crime Act 1997 and related legislation, Acts relating to certain regulated financial service businesses and the Bermuda Monetary Authority, and the Revenue Act 1898, to further enhance Bermuda's anti-money

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laundering and anti-terrorist financing legislation and to give effect to recommendations of the Financial Action Task Force;

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:

Preliminary

Citation

1 This Act may be cited as the Proceeds of Crime (Miscellaneous) (No. 4) Act 2018.

Proceeds of Crime Act 1997 and related legislation

Amends the Proceeds of Crime Act 1997

2 (1) In section 42A(1) of the Proceeds of Crime Act 1997, insert in the correct alphabetical order the following definition—

“ “financial group” means a group designated as such under section 42B;”.

(2) After section 42A of that Act, insert the following section—

“Designation of group as financial group

42B (1) The Minister responsible for justice may, upon the advice of relevant competent authorities, by order designate a group that consists of—

- (a) a parent company, or any other type of legal person, which exercises control and coordinating functions over the rest of the group for the application of group supervision of anti-money laundering and anti-terrorist financing policies and procedures; and
- (b) its branches and subsidiaries that are subject to the anti-money laundering and anti-terrorist financing policies and procedures,

as a financial group.

(2) An order made under subsection (1) shall specify the date on which the order is to take effect, being a date not later than 12 months after the date on which the order is made.

(3) An order made under subsection (1) is subject to the negative resolution procedure.”.

(3) In section 45(5)(b)(ii) of that Act, delete “as soon as it is reasonable for him to make it”, and substitute “is made promptly after doing the act”.

(4) In section 46(2) of that Act, repeal paragraph (c) and substitute—

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“(c) he does not promptly disclose this information or other matter to the FIA after it comes to his attention.”.

(5) In section 47(2)(a) and (b)(i) of that Act, delete “has been” and insert “is being or has been”.

(6) In section 49(1) of that Act, delete “and” at the end of paragraph (c), delete the comma and insert “; and” at the end of paragraph (d), and after that paragraph insert—

“(e) coordinating activities to identify, assess and understand Bermuda’s money laundering and terrorist financing risks and taking the necessary steps to ensure that such risk assessments are kept up-to-date.”.

(7) In sections 49D(1), 49E(1), 49G, 49H(3) and 49I(1) of that Act, after “financial institution” in each place, insert “or a financial group”.

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

3 (1) In section 2 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008—

(a) in subsection (1), insert in the correct alphabetical order the following definition—

“ “financial group” has the meaning given in section 42A(1) of the Proceeds of Crime Act 1997;”;

(b) in subsection (2), delete “the definition of AML/ATF regulated financial institution” and substitute “the definitions of AML/ATF regulated financial institution and financial group”.

(2) In section 3 of that Act—

(a) in subsection (1)(a), after “financial institutions”, insert “, financial groups”; and

(b) in subsections (2), (3) and (4), after “regulated person”, insert “, financial group”.

(3) In section 5(1) and (1A) of that Act—

(a) after “monitor”, insert “, on a risk-sensitive basis.”; and

(b) after “relevant persons”, insert “and financial groups”.

(4) In section 5(2) of that Act—

(a) delete “and” at the end of paragraph (c), delete the full stop at the end of paragraph (d) and insert “; and”, and after that paragraph insert—

“(e) international sanctions.”;

(b) at the end, insert—

“and a supervisory authority must update the guidance to take account of any amendments to the AML/ATF Regulations and other relevant legislation, as well as developments in best practice in compliance matters.”.

(5) In section 6 of that Act—

(a) in subsection (1), after “financial institutions”, insert “, financial groups”;

(b) in subsection (2), after “under the regulatory Acts”, insert “, and financial groups”.

(6) In section 7 of that Act, after subsection (1), insert—

“(1A) The statement of principles published by a competent authority under subsection (1) in relation to the exercise of the competent authority’s powers under that subsection shall apply to a financial group.”.

(7) In section 8(1)(a) of that Act, delete “and” at the end of subparagraph (iii) and, after subparagraph (iii), insert—

“(iv) all financial groups; and”.

(8) In sections 16 to 19 of that Act, delete “person or entity” in each place, and substitute “person, financial group, or entity”.

(9) In section 20 of that Act—

(a) in subsection (1)(a), after “financial institution,”, insert “financial group,”;

(b) in subsection (1)(b), after “financial institution”, insert “, financial group”;

(c) in subsection (3)(a), after “financial institutions”, insert “and financial groups”;

(d) in subsections (5) and (6), delete “person or entity” in each place, and substitute “person, financial group, or entity”.

(10) In section 21 of that Act—

(a) in subsection (1), after “financial institution”, insert “, financial group”;

(b) in subsection (2)(a), after “the person”, insert “, financial group”.

(11) In sections 22, 23 and 33 of that Act, delete “person or entity” in each place, and substitute “person, financial group, or entity”.

(12) In section 24(3) of that Act, delete “persons or entities”, and substitute “persons, financial groups or entities”.

(13) In section 37(2) of that Act, after “financial institution”, insert “and financial group”.

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

4 (1) In regulation 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, insert in the correct alphabetical order the following definition—

“financial group” has the meaning given in section 42A(1) of the Proceeds of Crime Act 1997;”.

(2) In regulation 4 of those Regulations—

(a) delete the full stop at the end of paragraph (e) and substitute a semi-colon; and

(b) after paragraph (e), insert—

“(f) as required by regulation 12A, members of financial groups.”.

(3) In regulation 6 of those Regulations, after paragraph (3), insert—

“(3A) Where a relevant person is required to apply customer due diligence measures in the case of a life insurance policy, the relevant person must include the beneficiary as a risk factor in determining the extent of customer due diligence measures required in accordance with paragraph (3).”.

(4) In regulation 10 of those Regulations—

(a) in paragraph (1)—

(i) delete “A relevant person is not required to apply the customer due diligence measures”, and substitute “Subject to paragraph (1A), a relevant person is not required to apply the full customer due diligence measures”; and

(ii) delete “any of the following paragraphs” and substitute “paragraph (2), (3), (4), (5), (6) or (7)”.

(b) after paragraph (1), insert —

“(1A) Paragraph (1) applies only if—

(a) after assessing the risk, the relevant person has reasonable grounds for believing that there is a low risk of money laundering and of terrorist financing; and

(b) the relevant person has no suspicion of money laundering or of terrorist financing,

and the relevant person shall record its assessment.”.

(5) In regulation 11(3) those Regulations, delete “from a country or territory other than Bermuda”.

(6) After regulation 12 of those Regulations, insert—

“Financial groups

12A A financial group shall implement group-wide policies and procedures against money laundering and terrorist financing which are applicable and appropriate to all members of the financial group, and these policies and procedures shall include—

- (a) procedures and requirements set out under regulations 5, 6, 7, 8, 14, 14A, 16, 17, 18 and 18A of these Regulations;
- (b) policies and procedures for sharing information required for the purposes of customer due diligence and money laundering and terrorist financing risk management, including information on transactions which appear unusual and have generated a suspicious transaction report;
- (c) the provision at group level of compliance, audit and anti-money laundering and anti-terrorist financing functions, of customer, transaction and account information from branches and subsidiaries when necessary for anti-money laundering or anti-terrorist financing purposes; and
- (d) adequate safeguards on the confidentiality and use of information exchanged.”.

(7) In regulation 16 of those Regulations—

- (a) in paragraph (4), delete the words from after “respond” until (and including) “from”, and substitute “promptly to enquiries from a supervisory authority (in respect of a relevant person under the authority’s supervision),”; and
- (b) after paragraph (4), insert—

“(5) A relevant person shall take appropriate steps (including the use of risk mitigation mechanisms referred to in paragraph (1)(ea)) to identify, assess and understand its money laundering and terrorist financing risks (depending on the type of customers, business relationships, countries or geographic areas, services, delivery channels, products or transactions), and shall document the risk assessments and keep them updated.”.

(8) In regulation 21 of those Regulations, in the definition of “batch file transfer”, after “transmission”, insert “, being transferred to the same PSP, but may or may not be ultimately intended for different payees”.

(9) In regulation 22(2) of those Regulations—

- (a) delete “credit or debit card” and substitute “credit card, debit card or pre-paid card”;
- (b) delete the full stop at the end of paragraph (b) and substitute a coma; and

(c) insert after paragraph (b)—

“unless the card is used as a payment system to effect a person-to-person transfer of funds.”.

(10) Revoke regulation 25 of those Regulations and substitute—

“Batch file transfers

25 In the case of a batch file transfer from a single payer where any of the payees’ PSPs are situated outside Bermuda, regulation 23(1) does not apply to the individual transfers bundled together in the batch file transfer if—

- (a) the batch file transfer contains complete information on the payer and on each of the payees for each individual transfer;
- (b) the individual transfers of funds carry the account number of the payer or a unique identifier where an account number is not available; and
- (c) the complete information provided on all payees is fully traceable within the beneficiary country.”.

(11) In regulation 26(2) of those Regulations, after “in place”, insert “, which includes post-event monitoring or real-time monitoring where feasible,”.

(12) In regulation 30 of those Regulations—

- (a) renumber the existing provision as paragraph (1); and
- (b) after paragraph (1), insert—

“(2) Intermediary PSPs shall take reasonable measures commensurate with their risk-based policies, procedures and controls and consistent with straight-through processing, to identify transfers of funds that lack complete information for the payer or payee.

(3) Where an intermediary PSP becomes aware, when receiving a transfer of funds, that information on the payer or payee is incomplete or missing, regulation 27 shall apply as if references in that regulation to “the payee’s PSP” were references to the intermediary PSP.

(4) In paragraph (2), “straight-through processing” means payment transactions that are conducted electronically without the need for manual intervention.”.

(13) In regulation 31 of those Regulations, revoke paragraphs (2), (3), (4) and (5), and substitute—

“(2) Where technical limitations prevent the intermediary PSP from including all required payer or payee information accompanying the cross-border funds transfer in a related domestic funds transfer, the intermediary PSP shall keep

a record, for at least five years, of all the information received from the payer's PSP or another intermediary PSP.

(3) In any such case, the intermediary PSP shall, within three working days of receiving a request from the payee's PSP to do so, make available to the payee's PSP all the information on the payer or payee that it has received.”.

(14) After regulation 31 of those Regulations, insert—

“Obligations where a PSP controls both payee and payer side of a cross-border transfer of funds

31A In the case where the PSP controls both the payee and the payer side of a transfer of funds, the PSP shall—

- (a) take into account all the information from both the payee's and payer's sides in order to determine whether to make a disclosure to the Financial Intelligence Agency in accordance with section 46 of the Proceeds of Crime Act 1997 or Schedule 1 to the Anti-Terrorism (Financial and Other Measures) Act 2004; and
- (b) where a determination is made that a disclosure should be made to the Financial Intelligence Agency about a transfer of funds, also make a disclosure to the relevant financial intelligence unit in any country affected by that transfer of funds, and make relevant transaction information available to the Financial Intelligence Agency.”.

Amends the Proceeds of Crime (Designated Countries and Territories) Order 1998

5 In paragraph 18(1) of Schedule 2 to the Proceeds of Crime (Designated Countries and Territories) Order 1998, after “section 6”, insert “or 6A (as the case may be)”.

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

6 (1) In section 2 of the Anti-Terrorism (Financial and Other Measures) Act 2004, insert in the correct alphabetical order the following definition—

“financial group” has the meaning given in section 42A(1) of the Proceeds of Crime Act 1997;”.

(2) In section 9 of that Act—

- (a) in subsection (1)(a), delete “has committed an offence”, and substitute “is committing or attempting to commit, or has committed, an offence”;
- (b) in subsection (3)—
 - (i) after “disclose”, insert “promptly”; and
 - (ii) delete “, as soon as is reasonably practicable”.

(3) In section 12(3) of that Act, delete paragraph (c) and substitute—

“(c) promptly.”.

- (4) In section 12B of that Act—
 - (a) in subsections (1), after “financial institution”, insert “or a financial group”;
 - (b) in subsection (2), after “financial institution”, insert “, to a financial group”;
and
 - (c) in subsection (3)—
 - (i) in paragraph (a), after “financial institution”, insert “, financial group”;
and
 - (ii) in paragraphs (b) and (c), after “financial institutions”, insert “, financial groups”.
- (5) In section 12D of that Act—
 - (a) at the end of the heading, add “and financial groups”; and
 - (b) in the section, after “financial institution”, insert “or a financial group”.
- (6) In section 12F(1) and (2)(b) of that Act, after “financial institution”, insert “or a financial group”.
- (7) In section 12G of that Act—
 - (a) in subsections (1) and (2)(b), after “financial institution”, insert, “or a financial group”; and
 - (b) in subsection (3)(a), delete “AML/ATF regulated financial institution’s knowledge”, and substitute “knowledge of the AML/ATF regulated financial institution and financial group”.
- (8) In sections 12H(1) and 12I of that Act, after “financial institution”, insert “, a financial group”.
- (9) In section 12J(3) of that Act, after “financial institutions”, insert “, financial groups”.
- (10) In section 12K of that Act—
 - (a) in subsection (1), after “financial institution” insert “, financial group”; and
 - (b) in subsection (4)—
 - (i) in paragraph (a), after “financial institution” insert “, financial group”;
and
 - (ii) in paragraph (b), after “financial institutions” insert “, financial groups”.
- (11) In section 12L of that Act, after “person”, in each place, insert “or financial group”.
- (12) In section 12O of that Act—
 - (a) in subsection (1), after “person”, insert “or a financial group”; and

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- (b) in subsection (1)(c), after “persons”, insert “or financial groups”.
- (13) In section 13(1) of that Act, delete paragraphs (a) and (b) and substitute—
- “(a) on summary conviction, to a fine of \$50,000 or to imprisonment for five years, or to both;
 - (b) on conviction on indictment, to an unlimited fine or to imprisonment for twenty years, or to both.”.
- (14) In Schedule 1 to that Act—
- (a) in paragraph 1(2), delete “has committed an offence”, and substitute “is committing or attempting to commit, or has committed, an offence”;
 - (b) in paragraph 1(4), delete “does not disclose the information or other matter to the FIA or a nominated officer as soon as is reasonably practicable after it comes to him”, and substitute “does not promptly disclose the information or other matter to the FIA or a nominated officer after the information or other matter comes to him”;
 - (c) in paragraph 2(4), delete “as soon as is practicable”, and substitute “promptly”.

Amends the Financial Intelligence Agency Act 2007

7 In section 16(1) of the Financial Intelligence Agency Act 2007, after “relating to”, insert “the suspected proceeds of criminal conduct or”.

Mutual legal assistance

Amends the Criminal Justice (International Co-operation) (Bermuda) Act 1994

8 (1) In section 6(2) of the Criminal Justice (International Co-operation) (Bermuda) Act 1994, after “thinks fit”, insert “forthwith”.

(2) After section 6 of that Act, insert—

“Bermudian evidence for use overseas - civil recovery proceedings

6A (1) This section has effect where the Attorney-General receives—

- (a) from a court or tribunal exercising jurisdiction in a country or territory outside Bermuda or a prosecuting authority in such a country or territory; or
- (b) from another authority in such a country or territory which appears to him to have the function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in Bermuda in connection with civil recovery proceedings that have been instituted, or a civil recovery investigation that is being carried on, in that country or territory.

(2) If the Attorney-General is satisfied—

- (a) that an investigation into unlawful conduct has commenced in the country or territory in relation to the proceeds of unlawful conduct to which the civil recovery proceedings relate;
- (b) that unlawful conduct, in that country or territory or elsewhere, has been established;
- (c) that no criminal proceedings in respect of that unlawful conduct can commence or, if commenced, can continue because the person or persons involved in the unlawful conduct are unknown or, if known, have died or are at large,

he may, if he thinks fit, forthwith by a notice in writing nominate a court in Bermuda to receive such of the evidence to which the request relates as may appear to the court to be appropriate for the purpose of giving effect to the request.

(3) For the purpose of satisfying himself as to the matters mentioned in subsection (2) above, the Attorney-General shall regard as conclusive a certificate issued by such authority in the country or territory in question as appears to him to be appropriate.

(4) In this section—

“civil recovery investigation” has the meaning given in section 7 of the Proceeds of Crime Act 1997;

“civil recovery proceedings” means proceedings seeking the confiscation of property which is or represents the proceeds of unlawful conduct, where the person or persons involved have not been convicted of an offence to which the proceeds relate;

“evidence” includes documents and other articles;

“unlawful conduct” has the meaning given in section 36B of the Proceeds of Crime Act 1997.

(5) Schedule 1 to this Act has effect with respect to the proceedings before a nominated court in pursuance of a notice under subsection (2) above.”.

Companies, partnerships, money service businesses, trusts and the BMA

Amends the Companies Act 1981

9 (1) In section 13 of the Companies Act 1981—

- (a) at the end of subsection (2A), insert “, and shall file with the Registrar any amendments to such information within 30 days of the amendment”;
- (b) after subsection (5), insert—

“(6) If default is made in complying with subsection (2A), the company and every officer of the company who is in default shall be liable to a default fine.”.

(2) In section 14 of that Act—

- (a) in subsection (1), delete “The”, and substitute “Subject to subsection (4), the”;
- (b) after subsection (3), insert—

“(4) The Registrar shall, in respect of each company registered under this section, enter in the register—

- (a) the name of the company;
- (b) the certificate of incorporation of the company;
- (c) the Memorandum of Association of the company; and
- (d) the address of the registered office of the company.

(5) The register of companies, containing the information entered under subsection (4) and such other information as the Registrar may determine, shall be open to public inspection at the office of the Registrar during normal business hours.”.

(3) In section 65(1) of that Act, repeal paragraph (a) and substitute—

- “(a) the names and addresses of the members, and in the case of a company having a share capital—
 - (i) a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number;
 - (ii) in respect of any shares that are not fully paid, a statement specifying the amount paid or agreed to be considered as paid on such shares; and
 - (iii) the categories of shares, including the nature of the associated voting rights; and”.

Amends the Limited Liability Company Act 2016

10 (1) In section 31 of the Limited Liability Company Act 2016—

- (a) in subsection (1), delete “The” and substitute “Subject to subsection (2), the”;
- (b) repeal subsection (2) and substitute—

“(2) The Registrar shall, in respect of each limited liability company formed under section 30(3), enter in the register the following information—

- (a) the name of the limited liability company;
- (b) the certificate of formation of the limited liability company; and
- (c) the address of the registered office of the limited liability company.

(3) The register of limited liability companies, containing the information entered under subsection (2) and such other information as the Registrar may determine, shall be open to public inspection at the office of the Registrar during normal business hours.”.

(2) In section 55(2) of that Act, after paragraph (c), insert—

“(d) in respect of any limited liability company—

- (i) a statement of the interest held by each member;
- (ii) in respect of any interest that are not fully paid, a statement specifying the amount paid or agreed to be considered as paid on such interest; and
- (iii) the categories of interest, including the nature of the associated voting rights.”.

Amends the Limited Partnership Act 1883

11 In section 4 of the Limited Partnership Act 1883—

- (a) in subsection (1)(b), delete “in a register to be kept by him for that purpose open to public inspection”;
- (b) insert after subsection (3), the following subsections—

“(4) The Registrar shall, in respect of each limited partnership formed under this section, enter in the register—

- (a) the name of the limited partnership;
- (b) the certificate referred to in section 3; and
- (c) the address of the registered office of the limited partnership.

(5) The register of limited partnership, containing the information entered under subsection (4) and such other information as the Registrar may determine, shall be open to public inspection at the office of the Registrar during normal business hours.”.

Amends the Exempted Partnerships Act 1992

12 In section 22 of the Exempted Partnerships Act 1992—

- (a) in subsection (1), delete “The” and substitute “Subject to subsection (1A), the”;
- (b) after subsection (1), insert—

“(1A) The Registrar shall, in respect of each exempted partnership registered under this section, enter in the register—

- (a) the name of the exempted partnership;

- (b) the certificate of registration issued pursuant to section 9(3); and
- (c) the address of the registered office of the exempted partnership.”.

Amends the Money Service Business Act 2016

13 In section 8(1) of the Money Service Business Act 2016, after “within Bermuda”, insert “, or carry on money service business as an agent for a person carrying on money service business in or from within Bermuda,”.

Amends the Trustee Act 1975

14 (1) In section 13A of the Trustee Act 1975—

- (a) in subsection (1)—
 - (i) in the chapeau, after “accurate”, insert “and adequate”;
 - (ii) delete the full stop at the end of paragraph (d), and substitute a comma;
 - (iii) after paragraph (d), insert—

“and shall keep the information current, accurate and updated on a timely basis.”;

- (b) in subsection (2A)—
 - (i) delete “, from time to time, keep a current and accurate record”, and substitute “keep an accurate and adequate record”;
 - (ii) at the end insert “, and shall keep the information current, accurate and updated on a timely basis”;
- (c) in subsection (3), delete “seven thousand five hundred dollars”, and substitute “twenty thousand dollars”.

(2) In section 13AA(1) of that Act—

- (a) in the chapeau, after “accurate”, insert “and adequate”;
- (b) at the end of that subsection, insert “, and shall keep the information current, accurate and updated on a timely basis”.

(3) In section 13B(1) of that Act—

- (a) in the chapeau, before “identification information”, insert “adequate”;
- (b) at the end of that subsection, insert “, and shall keep the information current, accurate and updated on a timely basis”.

(4) In section 13B(2) of that Act—

- (a) in the chapeau, before “identification information”, insert “adequate”;
- (b) at the end of that subsection, insert “, and shall keep the information current, accurate and updated on a timely basis”.

(5) In section 13B(4) of that Act—

- (a) delete “, from time to time, keep a current and accurate record”, and substitute “keep an accurate and adequate record”;
- (b) at the end, insert “, and shall keep the information current, accurate and updated on a timely basis”.

(6) At the end of section 13B of that Act, after subsection (4), insert—

“(5) All information required to be kept under this section shall be retained for a minimum period of five years from the date on which the trustee or company in question ceases to be involved with the trust.”.

(7) In section 54A(1) of that Act, delete “seven thousand five hundred dollars”, and substitute “twenty thousand dollars”.

Amends the Bermuda Monetary Authority Act 1969

15 In section 31 of the Bermuda Monetary Authority Act 1969—

(a) in subsection (1AA), after paragraph (ac), insert—

“(ad) for the purpose of enabling or assisting in the discharge of the statutory functions of—

- (i) a supervisory authority (as defined under section 2(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008);
- (ii) the Registrar-General, as relates to the functions of the Registrar-General under the Charities Act 2014;”;

(b) after subsection (1AA), insert—

“(1AB) Subsection (1) does not preclude the disclosure of information for the purpose of enabling or assisting the Bermuda Police Service in their functions relating to—

- (a) the prevention, detection, investigation or prosecution of criminal conduct, whether in Bermuda or elsewhere;
- (b) the prevention, detection, investigation or sanctioning of conduct for which penalties other than criminal penalties are provided under the law of Bermuda or of any country or territory outside Bermuda;
- (c) the carrying out of any functions of any intelligence service.”;

(c) after subsection (1B), insert—

“(1BA) Subsection (1) does not preclude the disclosure of information for the purpose of enabling or assisting with—

- (a) the implementation of, compliance with or enforcement of international sanctions measures that have effect within Bermuda;
- (b) the prevention, detection or investigation of breaches of international sanctions measures that have effect within Bermuda;
- (c) the enabling of any person or body within Bermuda, whose functions include any of the matters set out at paragraphs (a) and (b), to carry out those functions.”; and
- (d) after subsection (4), insert—

“(5) In this section, “international sanctions” has the meaning given in section 5(1B) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.”.

Revenue Act 1898

Amends the Revenue Act 1898

16 (1) In section 99 of the Revenue Act 1898—

- (a) in subsection (1)(a), after “importation”, insert “or exportation”;
- (b) after subsection (1A), insert—

“(1B) Any customs officer, duly authorized in writing by the Collector of Customs in that behalf, may, within two years of the importation or exportation of any currency or negotiable instruments, require the importer, exporter or the owner of any such currency or negotiable instruments—

- (a) to produce all records relating in any way to the importation or exportation (as the case may be) of such currency or negotiable instruments; and
- (b) to answer any question in relation thereto, including in particular questions relating to the origin and intended use of such currency or negotiable instruments; and
- (c) to make such declaration in writing with respect to such currency or negotiable instruments,

as the customs officer may consider necessary.”;

- (c) in subsection (3), after “subsection (1)”, insert “or (1B)”.

(2) In sections 85, 96, 99A, 100, 101 and 102 of that Act, after “goods” in each place, insert “, currency or negotiable instruments”.

(3) In section 86(3) of that Act, after “article” in each place, insert “, currency or negotiable instrument”.

PROCEEDS OF CRIME (MISCELLANEOUS) (NO. 4) BILL 2018

EXPLANATORY MEMORANDUM

This Bill seeks to make a number of amendments to Bermuda's anti-money laundering and anti-terrorist financing ("AML/ATF") legislation to address technical issues identified in preliminary findings from the Caribbean Financial Action Task Force assessors in anticipation of the September 2018 assessment, so as to strengthen Bermuda's AML/ATF regime. The amendments include provisions to facilitate AML/ATF supervisory authorities in the discharge of their statutory functions; to ensure that AML/ATF supervisors supervise their relevant entities using a risk-based approach which includes the requirement to issue updated guidance notes and for the regulated entities themselves to understand their AML/ATF risk on an ongoing basis; to provide that suspicious activity reporting obligations of regulated entities in relation to either money laundering and terrorist financing are to be carried out promptly; to stipulate that the suspicious activity reporting obligation applies also whenever a regulated entity suspects that a terrorist financing transaction is being attempted and that such a report must be made even if the transaction was not successful or was not completed; to strengthen the provisions in relation to tipping off offences to ensure they fully adhere to international standards; to enhance information-gathering powers of the Financial Intelligence Agency and customs officers; and to strengthen Bermuda's anti-money laundering and anti-terrorist financing technical regime related to correspondent banking relationships.

Clause 1 is self-explanatory.

Clause 2 amends the Proceeds of Crime Act 1997, and introduces provisions relating to "financial groups" as defined.

Clause 3 amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 to strengthen the AML/ATF regime and to include financial groups.

Clause 4 amends the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Regulations 2008 to strengthen the AML/ATF regime.

Clause 5 makes a consequential amendment to the Proceeds of Crime (Designated Countries and Territories Order) 1998.

Clause 6 amends the Anti-Terrorism (Financial and Other Measures) Act 2004 to update the penalties for ML/TF offences and to ensure that FATF Standards requiring prompt reporting are met.

Clause 7 amends section 16 of the Financial Intelligence Act 2007 to enhance the information gathering powers of the Financial Intelligence Agency.

Clause 8 inserts new section 6A into the Criminal Justice (International Co-operation) (Bermuda) Act 1994, to expressly empower the Attorney General in her capacity as Bermuda's Central Authority for mutual legal assistance to provide international assistance for non-conviction based confiscation proceedings in circumstances where no criminal

proceedings can be commenced or continued (for example, if the defendant is deceased or is at large). The provision is mirrored on section 6, which relates to mutual legal assistance in criminal proceedings.

Clause 9 amends section 14 of the Companies Act 1981 to require that the minimum information to be held in the register of companies with respect to each registered company is: the name of the company; the certificate of registration; the Memorandum of Association; and the address of the registered office. The amendment to section 14 further requires that the register of companies with the minimum information entered and such other information as the Registrar may determine be made open for inspection by the public. The Companies Act 1981 is further amended in section 65 to require the register of members held by each registered company with a share capital to contain additional details of the shares held by each member, including whether the shares are fully paid up and the categories of the shares held.

Clause 10 amends section 31 of the Limited Liability Company Act 2016 to require that the minimum information to be held in the register of limited liability companies with respect to each limited liability company formed is: the name of the limited liability company; the certificate of formation; and the address of the registered office. The amendment to section 31 further requires that the register of limited liability companies with the minimum information entered and such other information as the Registrar may determine be made open for inspection by the public.

Clause 11 amends section 4 of the Limited Partnership Act 1883 to require that the minimum information to be held in the register of limited partnerships with respect to each limited partnership formed is: the name of the limited partnership; the certificate of formation; and the address of the registered office.

Clause 12 amends the section 22 of the Exempted Partnership Act 1992 to require that the minimum information to be held in the register of exempted partnerships with respect to each exempted partnership registered is: the name of the exempted partnership; the certificate of formation; and the address of the registered office.

Clause 13 amends section 8 of the Money Service Business Act 2016, to prohibit the use of agents by money service businesses.

Clause 14 amends sections 13A, 13AA and 13B of the Trustee Act 1975 to ensure that beneficial ownership information filed or retained is accurate, current and kept up to date. Penalties for offences under section 13A and 54A are increased from \$7,500 to \$20,000.

Clause 15 amends section 31 of the Bermuda Monetary Authority Act 1969 to authorize the Bermuda Monetary Authority (“BMA”) to disclose information to AML/ATF supervisory authorities to facilitate them in the discharge of their statutory functions, to the Registrar General to facilitate him in the discharge of his statutory functions under the Charities Act 2014, and to the Bermuda Police Service to assist them in the discharge of their investigative functions.

Clause 16 amends section 99 of the Revenue Act 1898 to enhance the information gathering powers of customs officers in relation to false declarations or non-declarations at the border, where currency and negotiable instruments are imported or exported.