



BMA Publishes Notice on Cannabis Related Risk

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In a Notice dated 12 November 2019, the Bermuda Monetary Authority (Authority or BMA) has confirmed that it will not object to BMA-supervised entities conducting business with licensed cannabis cultivators, processors or sellers, as long as the conduct of such business is not contrary to any offences that may be provided for in the laws of a foreign jurisdiction which amount to “criminal conduct” within the meaning of section 3 of the Proceeds of Crime Act 1997 of Bermuda (PoC Act).

If the business is in contravention of the PoC Act, the Authority has noted that there may be a statutory defence under section 45B of the PoC Act, which states that where there is knowledge or a reasonable belief that the relevant criminal conduct occurred outside Bermuda and was not unlawful under the criminal law applicable at the time in the foreign jurisdiction where it occurred then a person does not commit an offence under section 43 (concealing or transferring criminal property), 44 (assisting another to retain criminal property) or 45 (acquisition, possession or use of criminal property) of the PoC Act. The Supervised Entity would be responsible for raising the defence, if applicable.

According to the Notice, compliance will be satisfied when the cannabis activity in the foreign country is legal at all levels (including the federal level). This means that business activity originating from where cannabis may be legal at the state level, but is not legal at the federal level, i.e., the United States (US), will not be acceptable. As regards Canada, the Authority has clarified that while cannabis has been regulated and legal since October 2018 in Canada by the Federal Government, particular care must be taken to ensure that the US (or any other country where cannabis is not regulated and legal at the federal level) is not the origin of the activity in the Canadian operation, given Canada’s proximity to the US.

The Authority advises that the onus will be on BMA-supervised entities to fully understand all applicable laws related to cannabis in the jurisdiction where the business activities are being conducted, including jurisdiction of origin. The Notice further clarifies that there is an expectation that the appropriate level of precautionary measures will be taken by BMA-supervised entities, to detect and prevent money laundering, including a risk assessment of such entities’ clients. BMA-supervised entities that are ‘Regulated Financial Institutions’ pursuant to the PoC Act also need to apply customer due diligence or enhanced due diligence as required by the Proceeds of Crime Regulations 2008 including conducting source of funds enquiries to ensure that the provenance of funds and capital of the business do not predate the date of legitimization of Cannabis business in the customers’ jurisdiction. Suspicious Activity Reports should also be filed with the Financial Intelligence Agency if an entity observes behaviours that may indicate criminal activity.

The Notice issued by the Authority will be of particular interest to investment managers and investment funds in this sector (or that are interested in establishing in the sector) as it provides additional clarification that the establishment and registration of funds with investment strategies linked to the cannabis industry are permitted provided the activities are legal where business is being conducted and do not amount to criminal conduct under Bermuda law.

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