

2015

DESIGNATED GOVERNMENT AGENCIES

OBLIGATIONS FOR ANTI-MONEY LAUNDERING AND COMBATTING THE FINANCING OF TERRORISM

This information pamphlet is provide to designated government agencies that are require to be supervised by the Compliance Commission of the Bahamas for anti-money laundering and combating the financing of terrorism purposes.

THE COMPLIANCE COMMISSION OF THE BAHAMAS
OCTOBER 2015



The Compliance Commission of The Bahamas



The Establishment of the Compliance Commission

The Compliance Commission is an Independent Statutory Authority established by Section 39 of the Financial Reporting Act, Ch. 368 (FTRA) for the express purpose of ensuring that financial institutions which fall within its remit comply with the provisions of the substantive laws in the Bahamas relating to Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) contained in:

- Proceeds of Crime Act
- Financial Transactions Reporting Act
- Financial Transactions Reporting Regulations
- Financial Intelligence Unit Act
- Financial Intelligence (Transactions Reporting) Regulations, and
- Anti-Terrorism Act

The Functions of the Compliance Commission

- To maintain a general review of financial institutions in relation to the conduct of financial transactions.
- To conduct on-site examinations whenever the Commission deems necessary.

Financial Institutions Supervised by the Compliance Commission

The Compliance Commission (the Commission) is the Supervisory Authority for ALL financial institutions listed in section 46 (1) of the FTRA. This includes designated government agencies where the agency provides financial services pursuant to Section 3(1)(j)(v) of the FTRA.

Under section 3(1)(j)(v) of the FTRA the government agency is a financial institution in relation to any arrangement provided as a business service for a client that allows:

- borrowing, lending or investing money.
- deposits, withdrawals, encashment, payments or transfer of funds by any means, including accounts and safety deposit or safe custody arrangements.
- the transmission or receipt of funds through a transmission, money changing and safekeeping of cash and/or liquid securities.

Compliance Commission's Supervisory Programme for Financial Institutions

The Commission does not licence the financial institutions it supervises. It is responsible for ensuring financial institutions under its supervision comply with AML/CFT laws, regulations and guidelines. It supervises its constituents, which includes government agencies through a combination of the following programmes:

- Registration
- On-site and off-site examinations
- Education, training and awareness
- Directives and notices when necessary.

The Commission also has an established annual programme of engagement with the representative bodies of the financial institutions that it regulates. Consultative meetings are held annually with government agencies to review the activities of the previous year and to discuss plans for the ensuing year.

When is a Government Agency Subject to AML/CFT Laws?

Government agencies supervised by the Commission are subject to the AML/CFT laws on two levels.



On the first level, all government agencies are subject to the provisions of the Proceed of Crime Act (POCA) in common with all citizens and others affected by this Act. The law requires persons to inform the Financial Intelligence Unit (FIU), the Police and other relevant

agencies of any suspicious transactions that come to light during the course of their employment, trade or business activities. The Act provides immunity to such persons from legal action by clients aggrieved by the breach of confidentiality. It should be noted that the reporting of suspicious transactions is mandatory and a person who fails to report a suspicious transaction is liable to prosecution.

2

On the second level, designated government agencies that offer financial intermediary services pursuant to section 3 (1) (j) (v) of the FTRA are, in addition to being subject to the POCA, also subject to the AML/CFT regime contained in the FTRA, the FIUA, all Regulations and Guidelines made pursuant to these Acts.

When offering financial intermediary services the government agency is deemed to be a financial institution under the FTRA.

Anti-Money Laundering/Combating the Financing of Terrorism Obligations

As a financial institution, government agencies are required to comply with provisions of the Bahamian AML/CFT legislations listed below.

- Proceeds of Crime Act
- Financial Transactions Reporting Act
- Financial Transactions Reporting Regulations
- Financial Intelligence Unit Act
- Financial Intelligence (Transactions Reporting) Regulations, and
- Anti-Terrorism Act

Designated Government Agencies required to:

- Register with the Commission
- Comply with ALL AML/CFT laws and any guidelines or professional codes issued by relevant supervisory agencies.
- Submit to AML/CFT on-site examinations, unless given waiver from the Inspector of the Commission
- Submit to directives/notices issued by the Commission.

Obligation to Register with the Compliance Commission

The Commission has implemented a system of registration for all persons/businesses named in section 46 of the FTRA. These constituents, which include government agencies providing the service in Section 3 (1)(j)(v), MUST register with the Commission by completing its Registration Form R-1.

The form is available at the Commission or can be downloaded from the Commission's website.

Obligation to comply with AML/CFT laws and guidelines

The Bahamian AML/CFT laws and applicable guidelines require financial institutions to, at a minimum:

- Conduct and document a risk assessment of the business' products, services and operations to determine its level of exposure to the risks of money laundering and terrorist financing.
- Establish written risk-based AML/CFT policies and procedures that comply with the provisions of AML/CFT laws and guidelines.
- Appoint a Money Laundering Reporting Officer (MLRO) and a Compliance Officer (CO)
- Identify and verify customers and their source of funds
- Keep transaction, identification and verification records
- Conduct on-going monitoring of customer transactions
- Report suspicious transactions of money laundering and terrorist financing to the FIU, the police and other relevant agencies.
- Ensure the management and appropriate staff receives AML/CTF training **annually**
- Conduct internal AML/CTF compliance reviews at least once per year
- Submit to AML/CFT examination by the Commission and its appointed agents

Financial institutions are subject to sanctions for failure to comply with the minimum requirements of the AML/CFT laws and guidelines. These sanctions are stated in each statute listed above in “Anti-Money Laundering/Combating the Financing of Terrorism Obligations”.

Obligation to Submit to AML/CFT Examination

Under section 43 (b) of the FTRA, the Commission is mandated to conduct AML/CFT examinations of designated government agencies. The Agencies are subject to four (4) types of examinations by the Commission and its agents.

- routine (which may be either an on-site or an off-site examination),
- follow-up (on-site and off-site),
- random (on-site only), and
- special (on-site only).

Routine On-site Examinations - assess the financial institution’s level of compliance with the its written AML/CFT Policies and Procedures, AML/CFT laws i.e. the FTRA, FTRR, the FI(TR)R and Guidelines issued by the Financial Intelligence Unit. The examination reviews the agency’s procedures for the obligations listed above in “**Obligation to comply with AML/CFT laws and guidelines**”.

Off-site Examinations – where a financial institution applies to the Commission for a waiver from its obligation to submit to a routine OSE, the agency is required to submit an off-site examination. The examination is conducted by a senior staff member of the government agency. Contact the Commission for further information.

Follow-up Examinations - are conducted for the purpose of addressing the deficiencies of the AML/CFT systems of financial institutions that are revealed through the routine or off-site examinations. Follow-up examinations are conducted by the Commission's examiners.

Random Examinations –each year the Commission's examiners randomly select financial institutions to be the subject of an OSE. The OSE tests the routine examination process.

Special Examinations - where a financial institution supervised by the Commission has violated provisions of the AML/CFT laws and/or guidelines, or where information comes to the attention of the Commission that a financial institution is providing financial services despite having advised it to the contrary, a special on-site examination is conducted by the Commission.

Routine OSE Procedures

Before a routine OSE can be conducted a government agency must have a written AML/CFT Policies and Procedures document.

STEPS

1. The government agency receives a reminder OSE notice from the Commission advising that the agency is required to submit a routine OSE for a given period by 31st March. Where the agency is unable to meet the stated deadline it must apply by letter to the Inspector of the Commission for an extension. The letter should state the reason for the delay and the date the agency would like to have the OSE submitted.
2. Select an appointed accountant approved by the Commission to conduct the routine OSE from the list that appears on its website. Each accountant that has been authorised to conduct OSEs on behalf of the Commission is issued a Letter of Appointment (LOA) that expires 31st December each year.

No accountant should be permitted to conduct an OSE on behalf of the Commission unless he/she has a valid LOA. The Commission will not accept the submission of a routine OSE conducted by an unauthorised accountant.

N. B. The examining accountant must be independent of the firm.

3. The government agency and the appointed accountant should execute an engagement letter that stipulates the arrangement to conduct the OSE between the parties.
4. The appointed accountant conducts the OSE and submits the routine OSE Form I-7 to the Commission within ten (10) working days.
5. The Commission's examiners evaluate the routine OSE and issue corrective action where necessary. Where the OSE is rated poor or very poor, the financial institution is scheduled for a follow-up OSE to correct deficiencies found by the Commission examiners.

Failure to comply with On and Off-site Examinations
Section 44 (2) of the FTRA states:

“Any person failing or refusing to produce any record or to supply any information or explanation as is required by subsection (1) guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.”

For more information from the Compliance Commission

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