

2015

LAWYERS

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

This information pamphlet is provided for lawyers that are required 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



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 (POCA)
- Financial Transactions Reporting Act (FTRA)
- Financial Transactions Reporting Regulations (FTRR)
- Financial Intelligence Unit Act (FIUA)
- Financial Intelligence (Transactions Reporting) Regulations (FI(TR)R), and
- Anti-Terrorism Act (ATA)

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 lawyers call to the Bahamas Bar that provide financial services pursuant to Section 3(1)(k) and (j) of the FTRA.

Under section 3(1)(k) of the FTRA the lawyer is a financial institution in relation to any arrangement provided as a business service for a client where the lawyer **receives funds for the purpose of** deposit or investment, settling a real estate transaction, or simply holding in a client account on behalf of a client.

Under section 3(1)(j) of the FTRA the lawyer is a financial institution in relation to any arrangement provided as a business service for a client where the lawyer **administers, manages or acts as a trustee of funds** on behalf of a client, and without a financial and corporate service providers licence.

“**settling a real estate transaction**” occurs when the lawyer receives the funds that go towards closing the transaction. Funds, for this purpose means any amount, excluding a real estate broker’s commission and disbursements, expenses or fees associated with his (the lawyer’s) professional services for the real estate transaction. Receiving funds includes payments made directly to the lawyer, to his bank account or client account, whether by cash, cheque, wire transfer or whatever means, or to someone who he has authorised to receive the funds on his behalf.

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 lawyers 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 the Bahamas Bar Association to review the activities of the legal sector in relation to AML/CFT for the previous year and to discuss plans for the ensuing year.

When is a Lawyer Subject to AML/CFT Laws?

Lawyers are subject to the AML/CFT laws on two levels.

1 On the first level, all lawyers are subject to the provisions of the Proceed of Crime Act Ch. 93 (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, Lawyers that offer financial intermediary services pursuant to section 3 (1) (k) and (j) 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.

Obligation to Register with the Compliance Commission

The Commission has implemented a system of registration for all lawyers, whether or not they provide financial intermediary services.

All lawyers call to the Bahamas Bar are required to register with the Commission.

The purpose of this registration process is to assist the Commission with identifying those lawyers that do not provide financial intermediary services.

Registration Steps

1. Each lawyer is required to register with the Commission by completing its "active" registration Form R-1 or the "inactive" registration Form R-1A.
2. Those lawyers that **received funds** from clients for the purposes described in 3(1)(k) and/or 3(1)(j) of the FTRA, must complete registration Form R-1.
3. Those lawyers that **do not receive funds** from clients for the purposes described in 3(1)(k) and/or 3(1)(j) of the FTRA, must complete registration Form R-1A.
4. After receipt of a registration form, the Commission registers the lawyer as "active" or inactive".

All Registration forms are available at the Commission or can be downloaded from the Commission's website.

“Inactive” lawyers required to:

- Complete and Submit registration Form R-1A by 31st January each year to the Commission.
- Inform the Commission if or when he/she begins to perform the service in section 3(1) (k) and/or (j) of the FTRA.
- Adhere to the AML/CFT obligations under the Proceeds of Crime Act Ch.93 (POCA).

N. B. “Inactive” lawyers are not required to submit to AML/CFT on-site examinations by the Commission and its agents.

“Active” lawyers required to:

- Complete and Submit registration Form R-1 to 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 comply with AML/CFT Laws and Guidelines

As an “active” financial institution, lawyers 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

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 receive AML/CTF training **annually**.
- Conduct internal AML/CTF compliance reviews of its operations 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 **“Obligation to comply with AML/CFT Laws and Guidelines”**.

“Active” lawyers are also subject to penalties and sanctions for failure to comply with the Suspicious Transactions Guidelines issued by the FIU

Regulation 8 of the FI(TR)R states:

“(1) Notwithstanding any other law to the contrary, a financial institution carrying on business without complying with the requirements of these regulations or any guidelines issued pursuant to section 15 of the Act, or with guidelines, codes of practice or other instructions issued by a relevant agency, commits an offence and shall be liable —

- (a) on summary conviction to a maximum fine of \$10,000;
- (b) on conviction on information —
 - (i) for a first offence, to a maximum fine of \$50,000;
 - (ii) for a second or subsequent offence, to a maximum fine of \$100,000.”

“Active” lawyers are also subject to penalties and sanctions for failure to comply with the obligations imposed by the AML/CFT Codes of Practice issued by the Commission

Section 47(2) of the FTRA states:

“Where a financial institution violates or fails to comply with any provision in the codes of practice issued pursuant to this section, it shall be subject to —

- (a) any sanctioning powers that its Supervisory Authority may possess to deal with the violation or non-compliance; and
- (b) prosecution pursuant to regulation 8 of the Financial Intelligence (Transactions Reporting) Regulations in order to enforce the codes of Practice.”

Obligation to Submit to AML/CFT Examination

Under section 43 (b) of the FTRA, the Commission is mandated to conduct AML/CFT examinations of the operations of lawyers that have been registered as “active” financial institutions. These lawyers 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 – assesses the operations of “active” lawyers to determine the level of compliance with their 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.

Off-site Examinations – where an “active” lawyer applies to the Commission for a waiver from their obligation to submit to a routine OSE, the lawyers is required to submit an off-site examination. The examination is conducted by a senior staff member of the law firm. Waivers are issued by the Commission to “active” lawyers on a risk-sensitive basis. For further information contact the Commission.

Follow-up Examinations - are conducted for the purpose of addressing the deficiencies of the AML/CFT systems of “active” lawyers 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 “active” financial institutions to be the subject of an OSE. The Random 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 “active” lawyers/law firms must have a written AML/CFT Policies and Procedures document.

STEPS

1. The “active” lawyer/law firm receives a reminder OSE notice from the Commission advising that its firm is required to engage an accountant to conduct and submit a routine OSE of its operations to the Commission **by 31st March**. The notice states the period to be reviewed and it states whether the firm has any outstanding OSEs that are required to be submitted.

Where the lawyer/law firm 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 firm requests for submission of the OSE.

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 “active” lawyer/law firm 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 a 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 firm is scheduled for a follow-up OSE to correct deficiencies found by the Commission’s examiners.

“Active” lawyers are subject to penalties and sanctions for 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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Call: (242) 397-4198 **Fax:** (242) 322-6968

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