

FINANCIAL TRANSACTIONS REPORTING (WIRE TRANSFERS) REGULATIONS, 2018

Arrangement of Regulations

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S.I. No. 36 of 2018

FINANCIAL TRANSACTIONS REPORTING ACT, 2018

(No. 5 of 2018)

**FINANCIAL TRANSACTIONS REPORTING (WIRE TRANSFERS)
REGULATIONS, 2018**

The Minister, in exercise of the powers conferred by section 59 of the Financial Transactions Reporting Act, 2018, makes the following Regulations —

PART I - PRELIMINARY

1. Citation.

These Regulations may be cited as the Financial Transactions Reporting (Wire Transfers) Regulations, 2018.

2. Interpretation.

In these Regulations, unless the context otherwise requires —

□ **“Act”** means the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*);

“batch file transfer” means a transfer comprised of several individual wire transfers that are sent by a payer to the same financial institution, irrespective of whether the individual wire transfers are intended ultimately for one or more payees;

“beneficiary financial institution” means a financial institution that receives, on behalf of a payee, funds that have been transferred to the payee;

“dollars” means one thousand Bahamian dollars or its equivalent in foreign currency ;

“intermediary financial institution” means a financial institution, other than an originating or a beneficiary financial institution, that participates in the execution of wire transfers;

“originating financial institution” means a financial institution that initiates a wire transfer on behalf of a payer ;

“payee” means a person who is the intended final recipient of transferred funds;

“payer” means either a person who holds an account and allows a wire transfer from that account, or, where there is no account, a natural or legal person who places an order for a wire transfer;

“wire transfer” means any transaction carried out on behalf of a payer through a financial institution by electronic means with a view to making funds available to a payee at a beneficiary financial institution, whether or not the payer and payee are the same person;

“unique transaction identifier” means a combination of letters, numbers, or symbols, determined by a financial institution in accordance with the protocols of the payment and settlement system or messaging system used to effect the wire transfer, which permits traceability of the transaction back to the payer and the payee; and

“straight-through processing” means payment transactions that are conducted electronically without the need for manual intervention.

PART II - OBLIGATIONS OF ORIGINATING FINANCIAL INSTITUTIONS

3. Duty to verify payer's identity.

- (1) Subject to paragraph (2), an originating financial institution shall, before conducting a wire transfer, verify the payer's identity in accordance with section 7(1) of the Act and the Financial Transactions Reporting Regulations.
- (2) Where the payer is a facility holder of the originating financial institution and the originating financial institution has already verified his identity in accordance with section 7(1) of the Act, the originating financial institution is not required to verify the payer's identity pursuant to paragraph (1).

4. Information to accompany transfers.

Subject to regulations 5 and 6, originating financial institutions shall ensure that each wire transfer of one thousand dollars or more is accompanied by —

- (a) the payer's —
 - (i) name;
 - (ii) account number, where an account is used to process the transaction or, if no account is used, a unique transaction identifier; and
 - (iii) address or date and place of birth or the payer's national identity number or customer identification number; and

- (b) the payee's —
 - (i) name; and
 - (ii) account number, where an account is used to process the transaction or, if no account is used, a unique transaction identifier.

5. Exemption for batch file transfers.

Where a batch file transfer comprises individual wire transfers of one thousand dollars or more from a single payer to payees outside The Bahamas, the originating financial institution shall be exempted from the requirements of regulation 4 in respect of the inclusion of the payer's information with each individual transfer, provided that —

- (a) the batch file contains the information required under regulation 4 on —
 - (i) the payer;
 - (ii) the payees; and
- (b) the individual wire transfers include the payer's account number or, if no account is used, a unique transaction identifier.

6. Requirements for domestic wire transfers.

Every wire transfer may be accompanied solely by the account number of the payer, or a unique transaction identifier, where —

- (a) the originating financial institution of the payer and the beneficiary financial institution of the payee are both situated in The Bahamas; and
- (b) the originating financial institution provides the complete payer information prescribed in regulation 4 to any intermediary or beneficiary financial institution requesting such information within three business days of such a request.

7. Cross-border wire transfers below one thousand dollars.

Where the beneficiary financial institution of the payee is situated outside of The Bahamas, transfers of funds of less than one thousand dollars must be accompanied by the information required under sub-paragraphs (i) and (ii) of paragraph (a) and paragraph (b) of regulation 4.

8. Retention of records.

An originating financial institution shall keep for five years, a record of any information on the payer and the payee obtained under regulations 3 and 4.

9. Refusal to execute wire transfers.

Where an originating financial institution -

- (a) is unable to comply with the requirements specified in regulations 3 through 7; or
- (b) has any suspicion of money laundering or terrorism financing, the originating financial institution shall not execute the wire transfer.

PART III - OBLIGATIONS OF INTERMEDIARY FINANCIAL INSTITUTIONS

10. Technical limitations.

- (1) Intermediary financial institutions shall ensure that payer and payee information received with a wire transfer remains with the transfer unless technical limitations of the payment systems prevent this.
- (2) Where technical limitations prevent the required payer and payee, or payer or payee, information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer, the intermediary financial institution shall keep a record, for at least five years, of all the payer and payee, or payer or payee, information received from the originating financial institution or another intermediary financial institution.
- (3) Where an intermediary financial institution receives a wire transfer that does not have complete payer and payee, or payer or payee, information as required under these Regulations, it shall use a payment system with technical limitations only if—
 - (a) it informs the beneficiary financial institution or the other intermediary financial institution that it does not have complete payer and payee, or payer or payee, information as required;
 - (b) it informs the beneficiary financial institution or the other intermediary financial institution that it intends to use a payment system with technical limitations; and
 - (c) it conveys the information in sub-paragraphs (a) and (b) using a form of communication accepted by, or agreed between, itself and the beneficiary financial institution or the other intermediary financial institution.
- (4) Where the intermediary financial institution uses a payment system with technical limitations, it shall, upon request from the beneficiary financial institution or another intermediary financial institution, provide all the

payer or payee information it has received, whether complete or not, within three business days of receiving the request.

11. Detection of missing payer and payee information.

Intermediary financial institutions shall take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack the required payer and payee information.

12. Duty to assess risks.

Intermediary financial institutions shall adopt risk-based policies and procedures that enable them to determine —

- (a) when to execute, reject or suspend wire transfers that are not accompanied by the complete payer and payee information as required; and
- (b) the appropriate follow-up action.

PART IV - OBLIGATIONS OF BENEFICIARY FINANCIAL INSTITUTIONS

13. Detection of missing payer and payee information.

Every beneficiary financial institution shall take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required payer and payee information.

14. Duty to verify identity.

- (1) Subject to paragraph (2), a beneficiary financial institution shall, before paying out funds in cash or cash equivalent to a payee in The Bahamas with respect to a cross-border wire transfer of one thousand dollars or more, verify the payee's identity as provided under section 7(1) of the Act and the Financial Transactions Reporting Regulations, 2018.
- (2) Where the payee is a facility holder of the beneficiary financial institution and the beneficiary financial institution has already verified his identity in accordance with section 7(1) of the Act, the beneficiary financial institution is not required to verify the payee's identity pursuant to paragraph (1).

15. Duty to assess risks.

- (1) Every beneficiary financial institution shall adopt risk-based policies and procedures that enable them to determine —
 - (a) when to execute, reject, or suspend wire transfers that are not accompanied by the complete payer and payee information as required; and
 - (b) the appropriate follow-up action.
- (2) Where the originating financial institution repeatedly fails to provide the complete payer and payee information as required, the beneficiary financial institution shall give the originating financial institution a reasonable opportunity to correct the failures, before it —
 - (a) rejects any future transfers of funds from the originating financial institution;
 - (b) restricts its business relationship with the originating financial institution; or
 - (c) terminates its business relationship with the originating financial institution.
- (3) Every beneficiary financial institution shall report any decision to reject future wire transfers from, or to restrict or terminate its business relationship with, the originating financial institution to the beneficiary financial institution's Supervisory Authority.
- (4) Every beneficiary financial institution shall consider missing or incomplete payer and payee information as a factor in assessing whether the wire transfer, or any related transaction, is suspicious, and whether it must be reported to the Financial Intelligence Unit in accordance with these Regulations and the Act.

PART V - OFFENCES AND PENALTIES

16. Offences.

- (1) A financial institution that contravenes, or fails to comply with, any provision of these Regulations commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars.
- (2) As an alternative to a prosecution under paragraph (1), the Supervisory Authority of a financial institution may, in accordance with the provisions of its governing statute, impose a fine of two hundred thousand dollars upon a financial institution that contravenes, or fails to comply with, any provision of these Regulations.

17. Administrative penalties.

- (1) Notwithstanding any penalties that may be imposed under these Regulations, any —
- (a) financial institution that fails to comply with any provision of these Regulations;
 - (b) employee, director or senior manager of a financial institution who knowingly concurs in a failure to comply with any provision of these Regulations,
- may be subject to an administrative penalty imposed by the Supervisory Authority with responsibility for regulating that financial institution and
- (i) in the case of a company, to a maximum penalty of two hundred thousand dollars;
 - (ii) in the case of an employee, director or a senior manager of a financial institution, to a maximum penalty of fifty thousand dollars.
- (2) A Supervisory Authority may not impose a penalty on a person specified in subsection (1)(a) or (b) for contravention of any customer due diligence measures if the Supervisory Authority is satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.
- (3) In deciding whether a person has contravened a provision of this Act. Supervisory Authority must consider whether at the time, the person followed any relevant guidance, rules or codes of practice issued by the Supervisory Authority.
- (4) When determining any penalty to be imposed on a person under subsection (1), a Supervisory Authority must take into account all relevant circumstances, including where appropriate —
- (a) the gravity and the duration of the contravention or failure;
 - (b) the degree of responsibility of the person on whom the Supervisory Authority proposes to impose the penalty;
 - (c) the financial strength of the person;
 - (d) the amount of profit gained or loss avoided by the person;
 - (e) the loss to third parties caused by the contravention or failure;
 - (f) the level of cooperation of the person with the Supervisory Authority;
 - (g) any previous contraventions or failures of the person; and
 - (h) any potential systemic consequences of the contravention or failure.

- (5) Where a Supervisory Authority proposes to impose a penalty on a person under subsection (1), the Supervisory Authority must issue a written warning to the person specifying —
 - (a) the nature of the contravention which the person is believed to have committed;
 - (b) the amount of the penalty;
 - (c) a reasonable period, which may not be less than twenty-eight days from the date of the notice, within which the person to whom the warning is issued may make representations to the Supervisory Authority.
- (6) The Supervisory Authority may extend the period specified in the notice.
- (7) The Supervisory Authority must determine, within a reasonable period, whether to give the person concerned a notice of its decision.
- (8) A decision given pursuant to subsection (7), must —
 - (a) be in writing;
 - (b) give the Supervisory Authority's reason for the decision to take the action to which the notice relates;
 - (c) give an indication of —
 - (i) any right to have the matter appealed provided under any other law governing that financial institution; and
 - (ii) the procedure for appeal.
- (9) If a Supervisory Authority decides not to take —
 - (a) the action proposed in a warning issued; or
 - (b) the action referred to in its notice of decision, the Supervisory Authority must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.
- (10) A notice of discontinuance must identify the proceedings which are being discontinued.

PART VI - MISCELLANEOUS

18. Exempt wire transfers.

These Regulations shall not apply to —

- (a) a wire transfer where the payer withdraws cash from his own account;
- (b) credit or debit card transactions if —

- (i) the payee has an agreement with a financial institution permitting payment for the provision of goods and services;
 - (ii) the payee has a unique transaction identifier that allows the transaction to be traced back to the payer; and
 - (iii) the unique transaction identifier accompanies all transfers flowing from the transaction;
- (c) a debit transfer authorization between two parties permitting payments between them through accounts if a unique transaction identifier accompanies the wire transfer enabling the transaction to be traced back to the payer;
 - (d) fines, penalties, duties and other taxes within The Bahamas; or
 - (e) transfers and settlements where both the payer and payee are financial institutions acting on their own behalf.

19. Suspicious transaction reporting.

Every financial institution that controls both the originating and the beneficiary side of a wire transfer shall —

- (a) take into account all the information from both the originating financial institution and the beneficiary financial institution in order to determine whether a suspicious transaction report has to be filed; and
- (b) where applicable, file a suspicious transaction report in any country affected by the suspicious wire transfer and make relevant transaction information available to the appropriate authorities.

20. Revocation.

The Financial Transactions Reporting (Wire Transfers) Regulations, 2015 (*No. 98 of 2015*) is hereby revoked.

Made this 6th day of June, 2018.

Signed
KEVIN PETER TURNQUEST
Minister of Finance