FINANCIAL TRANSACTIONS REPORTING ACT, 2018

Arrangement of Sections

Section

No. 5 of 2018

FINANCIAL TRANSACTIONS REPORTING ACT, 2018

AN ACT TO REPEAL AND REPLACE THE FINANCIAL TRANSACTIONS REPORTING ACT AND FOR MATTERS CONNECTED THERETO

[Date of Assent - 25th May, 2018]

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title and commencement.

(1) This Act may be cited as the Financial Transactions Reporting Act, 2018.

(2) This Act shall come into force on a date to be appointed by the Minister by notice to be published in the *Gazette*.

2. Interpretation.

(1) In this Act —

"account" means any facility or arrangement by which a financial institution or a Designated Non-Financial Business and Profession does any of the following—

(a) accepts deposits of cash;

(b) allows withdrawal or transfer of cash;

(c) pays negotiable or transferable instruments or other orders or collects negotiable or transferable instruments or payment orders on behalf of, any other person; or

(d) provides any facility or arrangement for a safety deposit box or for any other form of safe deposit;

"**accountant**" means a public accountant registered and licensed under section 13 of The Bahamas Institute of Chartered Accountants Act, 2015 *(No. 15 of 2015)*;

"**auditor**" includes a licensed internal or external auditor;

"**beneficial owner**" means —

(a) a natural person who ultimately owns or controls a facility holder;

(b) the natural person on whose behalf a transaction is being conducted;

(c) a natural person who exercises ultimate effective control over a legal person or legal arrangement;

(d) where no natural person is identified under subparagraphs (a), (b) or (c), the identity of the natural person who holds the position of senior managing official;

"**business relationship**" means an association between an individual and a company entered into for any commercial purpose;

"**cash**" means notes and coins in any currency and includes —

(a) postal orders;

(b) cheques of any kind, including travellers' cheques;

(c) bankers' drafts;

(d) bearer bonds and bearer shares;

(e) virtual currency;

"**Commission**" means the Compliance Commission continued under section 31;

"**Comptroller**" has the same meaning as in section 2 of the Customs Management Act *(No. 32 of 2011)*;

"**controlling interest**" means direct or indirect shareholders acting individually or as a group holding ten percent or more of the voting rights and shares in an entity;

"**correspondent relationship**" means the provision of banking, payment, cash management, international wire transfers, cheque clearing, payable through accounts, foreign exchange, securities transactions, cash transfers or similar services by one financial institution (hereinafter referred to as the 'correspondent institution'), to another financial institution (hereinafter referred to as the 'respondent institution');

"**counsel and attorney**" means a counsel and attorney admitted to practice under the Legal Profession Act *(Ch. 64)*;

"**currency or money**" means coin and paper money of any jurisdiction that is designated as legal tender or is customarily used and

accepted as a medium of exchange, including virtual currency as a means of payment;

"customer" means—

(a) a person for whom a transaction or account is arranged, opened or undertaken;

(b) a signatory to a transaction account;

(c) a person to whom an account or rights or obligations under a transaction have been assigned or transferred;

(d) a person who is authorised to conduct a transaction or control on account;

(e) a person who attempts to take any of the actions referred to in (a) to (d) above; or

(f) such other person as may be prescribed by the Minister;

"customer due diligence measures" means the measures imposed by sections 6 - 9 and 14;

"designated amount" means such amount as is for the time being prescribed by regulations made under section 59;

"Designated Non-Financial Business and Profession" has the meaning given to it in section 4;

"document" has the same meaning as in section 2 of the Evidence Act *(Ch. 65);*

"employer" means a person, body, association or organisation (including a voluntary organisation) in connection with whose activities an employee exercises a function (whether or not for gain or reward), and references to employment must be construed accordingly;

"entity" means a person, group, trust, partnership, fund or an unincorporated association or organisation;

"facility", subject to any regulations made under this Act —

(a) means an account or arrangement —

(i) that is provided by a financial institution to a facility holder; and

(ii) by, through or with which a facility holder may conduct two or more transactions whether or not they are so used; and

(b) without limiting the generality of the foregoing, includes —

(i) a life insurance policy;

(ii) an annuity;

(iii) the provision, by a financial institution, of a facility for the safe custody, including a safety deposit box;

"**facility holder**" in relation to a facility —

(a) means the person in whose name the facility is established and without limiting the generality of the foregoing, includes —

(i) any person to whom the facility is assigned; and

(ii) where the person in paragraph (a) is a mere nominee, the ultimate natural person who is the beneficial owner, settlor or beneficiary;

(iii) any person who is authorised to conduct transactions through the facility;

(iv) in relation to a facility that is a life insurance policy or annuity, any person who, for the time being, is the legal or beneficial owner of that policy or annuity; and

(b) for the purposes of this Act, a person becomes a facility holder in relation to a facility when that person is first able to use the facility to conduct transactions;

"**Financial Intelligence Unit**" means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act *(Ch. 367)*;

"**financial institution**" has the meaning given to it by section 3;

"**foreign financial institution**" means a financial institution in a foreign jurisdiction that is subject to an equivalent regime of monitoring, supervision and regulation as is herein provided and is subject to equivalent or higher anti-money laundering and anti-terrorism financing standards of regulation as provided for by Bahamian law;

"**funds**" means —

(a) any assets or property of any kind, however acquired, including but not limited to currency, bank credits, deposits and other financial resources, travellers cheques, bank cheques, money orders, promissory notes, shares, non-shareholding interests, securities, bonds, drafts and letters of credit;

(b) any interest in, dividends or other income on or value accruing from or generated by, in full or in part, any such assets or property referred to in paragraph (a);

(c) any legal documents or instruments in any form evidencing title to or interest in such assets or property in referred to in paragraph (a);

"**identified risk**" means corruption, cybercrime, human trafficking, money laundering, proliferation or financing of weapons of mass

destruction, terrorism or financing of terrorism or such other risk as the Minister may prescribe by regulations;

"**identified risk framework**" means any lawful measures or policies designed to minimize or eliminate identified risks;

"**industry organisation**" means any organisation the purpose of which, or one of the purposes of which, is to represent the interests of any class or classes of financial institution;

"**Inspector of Banks and Trusts Companies**" means the Inspector of Banks and Trust Companies established under section 13 of the Banks and Trust Companies Regulation Act *(Ch. 316)*;

"**Inspector of Financial and Corporate Services**" means the Inspector of Financial and Corporate Services appointed under section 11 of the Financial and Corporate Service Providers Act *(Ch. 369)*;

"**life insurance policy**" means a policy within the meaning of section 2 of the Insurance Act *(Ch. 347)*;

"**Minister**" means the Minister of Finance;

"**money laundering offence**" has the same meaning as in the Proceeds of Crime Act, 2018;

"**occasional transaction**" means a one-off transaction or linked transactions, that are carried out by a person otherwise than through a facility in respect of which that person is a facility holder;

"**originator**" means the person who allows a wire or cash transfer from his account, or where there is no account, the person that instructs a financial institution to perform a wire or cash transfer;

"**payable through accounts**" means a correspondent account used directly by a third party customer of the respondent institution to transact business on behalf of that party or on behalf of another person;

"**politically exposed person**" means an individual who is or has been entrusted—

(a) with a domestic prominent public function, inclusive of a head of state or government, legislator, politician, senior government, judicial or military official, senior executive of a state owned corporation, or important political party official;

(b) with a prominent public function by a foreign jurisdiction, inclusive of, a head of state or government, legislator, senior politician, senior government, judicial or military official, senior executive of a state owned corporation, or senior political party official;

(c) with a senior position at an international organisation or branch thereof, domestic or foreign,

and includes a family member or close associate of a politically exposed person;

"precious metals" means any article made of or containing gold, silver or platinum and such other precious metal as may be prescribed;

"precious stones" includes diamonds, rubies, sapphires and emeralds;

"prescribed amount" in relation to Part III, means such amount as is for the time being prescribed for the purposes of that Part by regulations made under section 60;

"principal facility holder" means the facility holder whom that financial institution reasonably regards, for the time being, as principally responsible for the operation, use or administration of that facility;

"real estate broker" has the same meaning as in section 2 of the Real Estate (Brokers and Salesmen) Act (*Ch. 171*);

"real estate transaction" means a transaction involving real estate that is carried out —

(a) by or under the supervision of a counsel and attorney by virtue of section 22 of the Legal Profession Act *(Ch. 64)*; or

(b) by a real estate broker who holds a licence in force under the Real Estate (Brokers and Salesmen) Act *(Ch. 171)*;

"senior management" means an officer or employee of a financial institution with sufficient knowledge and seniority to make decisions affecting the institution's risk exposure and need not involve a member of the board or directors and includes a person responsible for compliance or duly authorised to bind the financial institution;

"superannuation scheme" means a scheme within the meaning of the Superannuation and other Trust Funds (Validation) Act *(Ch. 178)* but does not include —

(a) a scheme established principally for the purpose of providing retirement benefits to employees where —

(i) contributions to the scheme by employees are made only by way of deduction from the salary or wages of those employees; and

(ii) the trust deed governing the scheme (or, as the case requires, the statute under which the scheme is constituted) does not permit a member to assign his interest in the scheme to any other person; or

(b) a scheme in respect of which no advertisement has been published inviting the public or any section of the public to become contributors to the scheme;

"**Supervisory Authority**" means, in relation to a financial institution under section 3, the agency designated by law for ensuring compliance with the requirements of this Act and any other anti-money laundering laws of The Bahamas, and includes the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas, the Inspector of Financial and Corporate Services, the Gaming Board and the Compliance Commission;

"**Suspicious Transaction Guidelines**" means guidelines issued by a supervisory authority;

"**suspicious transaction report**" means a report made pursuant to section 27(1);

"**transaction**" means —

(a) a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to —

(b) any deposit, withdrawal, exchange or transfer of cash, whether in currency or by cheque, payment order, settlement or set off between clearing institutions or branch offices or other instrument or by electronic or other non-physical means;

(c) the use of a safety deposit box or any other form of safe deposit;

(d) entering into any fiduciary relationship;

(e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;

(f) any payment made in respect of a lottery, bet or other game of chance;

(g) establishing or creating a legal person or legal arrangement; and

(h) such other transaction as may be prescribed by the Minister by regulation;

"**virtual currency**" means a digital representation of value but does not have legal tender status in any jurisdiction that can be traded and function as —

(a) a medium of exchange;

(b) a unit of account;

(c) a store of value.

(2) Where —

(a) for the purposes of any provision of this Act, it is necessary to determine whether or not the amount of any cash (whether alone or together with any other amount of cash) exceeds the prescribed amount; and

(b) the cash is denominated in a currency other than Bahamian currency,

the amount of the cash shall be taken to be the equivalent in Bahamian currency, calculated at the rate of exchange on the date of the determination, or, if there is more than one rate of exchange on that date, at the average of those rates.

(3) For the purposes of subsection (2), a written certificate purporting to be signed by an officer of any bank in The Bahamas that —

(a) a specified rate of exchange prevailed between currencies on a specified day; and

(b) that at such rate, a specified sum in one currency is equivalent to a specified sum in terms of the currency of The Bahamas,

shall be sufficient evidence of the rate of exchange so prevailing and of the equivalent sums in terms of the respective currency.

PART II – DUTY OF FINANCIAL INSTITUTIONS

3. Financial institutions.

(1) For the purposes this Act, **"financial institution"** means—

(a) a bank or trust company licensed under the Banks and Trust Companies Regulation Act *(Ch. 316)*;

(b) a company carrying on—

(i) long term insurance business, as defined in section 2 of the Insurance Act *(Ch. 347)*;

(ii) insurance business as defined in section 2 of the External Insurance Act *(Ch. 348)*; or

(iii) such other insurance business as the Minister may designate by notice published in the *Gazette*, after consultation with the IRF Steering Committee (established under section 5 of the Proceeds of Crime Act, 2018);

(c) a co-operative credit union registered under the The Bahamas Co-operative Credit Unions Act *(No. 9 of 2015)*;

(d) the holder of a gaming licence, proxy gaming licence, mobile gaming licence, restricted interactive gaming licence and gaming house operator licence under the Gaming Act *(No. 40 of 2014)*;

(e) a broker-dealer within the meaning of section 2 of the Securities Industry Act *(No. 10 of 2011)*;

(f) a trustee, administration manager or investment manager of a superannuation scheme;

(g) an investment fund administrator of an investment fund within the meaning of the Investment Funds Act *(Ch. 369A)*;

(h) a person whose business or a principal part of whose business consists of—

(i) borrowing or lending or investing money;

(ii) administering or managing funds on behalf of other persons;

(iii) acting as trustee in respect of funds of other persons;

(iv) dealing in life insurance, and insurance business, which is investment related;

(v) providing financial services that involve the transfer or exchange of cash, including (without limitation) services relating to financial leasing, money transmissions, credit cards, debit cards, treasury certificates, bankers draft and other means of payment, financial guarantees, trading for account of others (in money market instruments, foreign exchange, interest and index instruments, transferable securities and futures), participation in securities issues, portfolio management, safekeeping of cash and liquid securities, investment related insurance and money changing; but not including the provision of financial services that consist solely of the provision of financial advice;

(i) a financial and corporate service provider licensed under the Financial and Corporate Service Providers Act *(Ch. 369)*;

(j) a Designated Non-Financial Business and Profession as defined in section 4;

(k) a non-bank entity licensed and regulated by the Central Bank under the Payment Systems Act (*No. 7 of 2012*); and

(l) any other category of institutions that the Minister may by order designate.

(2) A person shall not be regarded as a financial institution for the purposes of this Act merely because that person carries on business as a security guard within the meaning of section 2 of the Inquiry Agents and Security Guards Act *(Ch. 210)*.

4. Designated non financial business and profession.

For the purposes of this Act, **"Designated Non-Financial Business and Profession"** means the business or profession of —

(a) real estate agents and brokers, when they are involved as real estate broker in financial transactions for their client concerning the buying or selling of real estate, and with respect to both the vendors and purchasers;

(b) land developer engaged in the sale or partition or condominiumizing of any part, parcel, lot or condominium unit of any larger tract or lot of land or any development of land involving the building of units sharing walls, common areas and utilities;

(c) a person whose business or any part of whose business consists of —

(i) buying for the purpose of trade, sale, exchange, or otherwise dealing in any previously owned precious metals or precious stones, whether altering the same after acquisition or not; or

(ii) lending of cash on the security of previously owned precious metals or precious stones of which the person takes possession, but not ownership, in expectation of profit, gain or reward;

(d) a pay day advance provider, hire purchase lender or any lender whose loans are secured by salary deductions;

(e) a counsel and attorney or accountant when they engage in, or carry out transactions for a client concerning —

(i) the buying or selling of real estate;

(ii) a deposit or investment of cash;

(iii) the management of client funds or securities;

(iv) the management of bank, savings or securities accounts;

(v) the organisation of contributions for the creation, operation or management of a legal person;

(vi) the creation, incorporation, operation or management of a legal person or legal arrangement, and buying and selling of a business entity;

(vii) the provision of a registered office or acting as a registered agent;

(viii) the acting as or arranging for another person to act as, a nominee shareholder for another person;

(f) an accountant, but only to the extent that the accountant receives cash in the course of that person's business for the purposes of

deposit or investment otherwise than as part of services rendered pursuant to a financial and corporate service provider's licence;

(g) a trust and company service providers not otherwise covered by this Act which, as a business, prepare for and carry out or otherwise provide the following services or transactions to third parties —

(i) acting as a formation, registration or management agent of legal persons;

(ii) acting as, or arranging for another person to act as, a director or secretary of a company or a partner of a partnership, or to hold a similar position in relation to other legal persons;

(iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or legal arrangement;

(iv) acting as, or arranging for another person to act as, a trustee of an express trust or performing the equivalent function for another, similar form of legal arrangement;

(v) acting as, or arranging for another person to act as, a nominee shareholder for another person;

(h) the Savings Bank as constituted under the Savings Bank Act (*Ch. 315*);

(i) a friendly society enrolled under the Friendly Societies Act *(Ch. 313);*

(j) the Bahamas Mortgage Corporation established under The Bahamas Mortgage Corporation Act (*Ch. 254*);

(k) the Bahamas Development Bank established under the Bahamas Development Bank Act (*Ch. 357*); and

(l) such other businesses and professions as the Minister may designate by Order.

RISK ASSESSMENT

5. Conduct of risk assessment.

(1) Every financial institution shall—

(a) take appropriate measures to identify, assess and understand its identified risks in relation to—

(i) its facility holders and the countries or jurisdictions of their origin;

(ii) the countries or jurisdictions of its operations; and

(iii) its products, services, transactions and delivery channels;

(b) develop and implement a comprehensive risk management system approved by the financial institution's senior management and commensurate with the scope of its activities, incorporating continuous identification, measurement, monitoring and controlling of identified risks;

(c) take appropriate measures to manage and mitigate those risks referred to in subsection (1)(a);

(d) take account of any risk assessment carried out at a national level and any regulatory guidance issued by its Supervisory Authority; and

(e) upon request, provide the Supervisory Authority with a copy of its risk assessment.

(2) Every financial institution shall carry out a risk assessment —

(a) prior to the launch of a new product or business practice;

(b) prior to the use of new or developing technologies;

(c) when there is a major event or development in the management and operation of the group,

to identify and assess the identified risks that may arise in relation to such products, business practices or technology for both new and pre-existing products and such assessment shall take into account —

(i) the facility holder's geographic area, product, service, transaction and means of delivery risk factors, which shall be proportionate to the nature and size of the financial institution's business; and

(ii) the outcome of any risk assessment carried out at a national level, and any regulatory guidance issued.

(3) Every financial institution shall document in writing the outcome of a risk assessment and shall keep the same up to date and make it available to relevant competent authorities and regulatory bodies upon request.

CUSTOMER DUE DILIGENCE

6. Financial institutions to undertake customer due diligence measures.

(1) Every financial institution shall undertake customer due diligence measures when opening an account for or otherwise establishing a business relationship with a facility holder.

(2) Where —

(a) doubts exist about the veracity or adequacy of previously obtained identification information of a facility holder;

(b) there is a suspicion of activities relating to identified risks involving the facility holder or the facility holder's account;

(c) a person, who is neither a facility holder nor in an established business relationship with the financial institution wishes to carry out a transaction (to be referred to as an "occasional transaction");

(d) it is determined that an occasional transaction is being conducted on behalf of another person,

sections 7 – 9, 13 and 14 shall apply.

(3) A financial institution shall ensure that every facility holder's due diligence requirements under sections 7 through 9 and 14 are met with respect to facility holders and beneficial owners with which the financial institution has a business relationship and —

(a) such measures shall be applied at appropriate times and on the basis of materiality and risk, depending on the type and nature of the facility holder, the business relationship, products or transactions;

(b) the adequacy of any previous facility holder due diligence measures that may have applied must be considered; and

(c) any relevant regulations made hereunder must be taken into account.

(4) A financial institution shall not establish or maintain an anonymous account or an account in a fictitious name.

(5) Unless there is a suspicion of identified risks (in which case the full range of customer due diligence measures must be applied without regard to any monetary threshold) sections 6, 7, 10, 12 to 16 of this Act shall apply to —

(a) casinos and gaming houses only when a customer opens an account or engages in a financial transaction equal to or above the designated amount whether conducted as a single transaction or several transactions that appear to be linked; and

(b) real estate agents and brokers, when they are involved as real estate broker in financial transactions for their client concerning the buying or selling of real estate, and with respect to both the vendors and purchasers.

(6) Notwithstanding section 1(2), a financial institution referred to in section 3(1)(b)(i), shall have one year from the date of the commencement of this Act to undertake customer due diligence measures in respect of existing facility holders in accordance herewith.

7. Due diligence measures.

(1) In fulfilling the obligations imposed by subsection (1) of section 6, every financial institution shall—

(a) identify the identity of a facility holder by means of verifying reliable, independent source documents, data or information;

(b) identify and verify the identity of any person purporting to act on behalf of the facility holder, and verify that such person is properly authorised to act in that capacity;

(c) understand, and as appropriate, obtain information on the purpose and intended nature of the business relationship, including the ownership and control structure of the facility holder.

(2) In addition to subsection (1), every financial institution shall identify and verify the beneficial owner of a facility, if any, and where the facility holder is a corporate entity, the obligation to verify the identity of beneficial owners will only be required for those beneficial owners having a controlling interest in the corporate entity.

(3) When applying customer due diligence measures, a financial institution shall take into account the outcome of the risk assessment required to be conducted pursuant to section 5 with respect to each facility holder and business relationship.

(4) Where the risks identified are low, the financial institution shall conduct simplified due diligence measures unless there is a suspicion of activities related to any identified risk in which case enhanced customer due diligence measures shall be undertaken.

(5) In the case of a trust, a financial institution shall identify and verify —

(a) the settlor, the trustees, the protector (if any) and any other natural person or persons exercising effective control over the trust;

(b) the beneficiaries or class of beneficiaries, so that the financial institution is reasonably assured that it will be able to establish the identity of the beneficiary at the time of payout or when the beneficiary intends to exercise his vested rights;

(c) other regulated agents of, and service providers to, the trust, including the identity of any person purporting to act as a manager, accountant, investment advisor or tax advisor.

(6) In the case of a life insurance policy or other investment related insurance policy, a financial institution shall —

(a) prior to the time of payout, take reasonable measures to document the name of an identified or designated beneficiary or obtain sufficient information concerning beneficiaries designated by characteristics or by class to assure the financial institution that it

will be able to establish the identity of the beneficiary at the time of the payout; and

(b) at the time of payout, verify the identity of the beneficiary.

(7) Any information obtained under subsections (1), (2) and (5) shall be kept accurate current and in accordance with the provisions of this Act.

(8) A Supervisory Authority may —

(a) issue any guidelines, rules or codes of practice regarding identification and verification for natural and legal persons;

(b) in consultation with the IRF Steering Committee, issue any guidelines requiring any regulated undertaking to comply with customer due diligence requirements under this Act in respect of each customer.

(9) If a financial institution forms a suspicion that a transaction relates to an identified risk the financial institution shall take into account the risk of tipping-off when performing the customer due diligence measures.

(10) Where the institution reasonably believes that performing the customer due diligence measures will tip -off the facility holder or potential facility holder, it may choose not to pursue those measures, and shall file a suspicious transaction report.

8. Identification and verification.

(1) Subject to subsection (3) every financial institution shall undertake identification and verification measures before opening an account or establishing a business relationship.

(2) Where in relation to an existing business relationship or facility —

(a) any identified risk activity under the Proceeds of Crime Act, 2018 is suspected; or

(b) doubts exist about the veracity or adequacy of previously obtained identification information of the facility holder,

identification and verification measures shall be completed before the facility holder may conduct any further business.

(3) The relevant Supervisory Authority may prescribe the circumstances in which verification of the identity of the facility holder and beneficial owner identity may be completed as soon as reasonably practicable after the establishment of the business relationship, provided that —

(a) the financial institution effectively manages the risks of activities related to any identified risk; and

(b) a delay in verification is essential not to interrupt the normal conduct of the business.

9. **Reliance on customer due diligence by third party.**

(1) A financial institution may rely on a third-party to undertake customer due diligence measures as required by section 6(3), except —

(a) where the third party is suspected of breach of the identified risk framework as defined; or

(b) where the relevant facility holder has committed any offence designated as an identified risk.

(2) The financial institution relying on the third party shall —

(a) immediately obtain the necessary information required under section 6(3) from the third party, including the identity of each facility holder and beneficial owner:

(b) take adequate steps to satisfy itself that the third party—

(i) will upon request, provide without delay copies of identification information and other relevant documents relating to customer due diligence requirements; and

(ii) is subject to AML/CFT obligations. is under supervision for compliance with these obligations and it has adequate procedures for compliance with customer due diligence and record keeping requirements.

(3) The Minister may by notice, prescribe from time to time designate any jurisdiction that he considers fulfils the terms of subsection (2)(b)(ii).

(4) Notwithstanding any other provision in this section, the financial institution relying on a third party shall remain responsible for compliance with this Act, including customer due diligence and reporting requirements.

(5) A financial institution relying on a third party that is part of the same financial group shall —

(a) apply customer due diligence, record-keeping requirements and internal controls and measures in accordance with the requirements under this Act;

(b) implement the customer due diligence, record-keeping requirements and internal controls and measures is supervised at the financial group level by a competent authority; and

(c) ensure that higher jurisdiction risk is adequately mitigated by the group's identified risk framework.

(6) A financial institution or designated non-financial business and profession shall report to the IRF Steering Committee where there has been persistent regulatory failure in respect of the identified risk framework or recognized weak compliance with international customer due diligence requirements by any jurisdiction or foreign financial institution.

10. Correspondent relationship.

When entering into a correspondent relationship, a financial institution shall, in addition to applying the measures under sections 6 through 11 and 16 of this Act —

(a) identify and verify the identity of the respondent institution with which they enter into a correspondent relationship;

(b) collect sufficient information on the respondent institution to fully understand the nature of its business and activities;

(c) based on publicly available information, evaluate the reputation of the respondent institution and the quality of supervision to which it is subject, including whether it has been the subject of any identified risk investigation or regulatory action;

(d) where applicable, obtain approval from a designated senior manager before establishing a new correspondent relationship;

(e) evaluate the controls implemented by the respondent institution with respect to identified risks;

(f) establish an agreement on the respective responsibilities of each party under the relationship, with particular regard to paragraph (e);

(g) in the case of a trusts, an implied trust or other legal arrangement resulting in the severance of legal ownership from beneficial interest by means of a legal device or entity, be satisfied that the beneficial owner has been appropriately identified; and

(h) in the case of a payable-through account, satisfy itself that the respondent institution —

(i) has conducted customer due diligence on the facility holder that have access to the account;

(ii) has implemented mechanisms for on-going monitoring with respect to the facility holder; and

(iii) is able to provide relevant customer due diligence information to the financial institution upon request.

11. Inability to fulfil customer identification obligations.

(1) A financial institution that cannot fulfil the requirements of sections 5 through 9 and 14 of this Act shall—

(a) not open the account or establish the business relationship;

(b) not carry out the transaction;

(c) terminate the business relationship; and

(d) consider filing a suspicious transaction report in accordance with this Act.

(2) Any financial institution that —

(a) intentionally opens an account or establishes a business relationship;

(b) carries out a transaction;

(c) fails to terminate a business relationship;

having failed to fulfil the requirements of sections 5 through 9 and 14 commits an offence and is liable upon summary conviction to a fine not exceeding five hundred thousand dollars or to imprisonment for a term of two years or both or in the case of a legal person to a fine not exceeding one million dollars.

12. On-going due diligence.

Every financial institution shall exercise risk based on-going due diligence throughout the course of each business relationship, which shall include —

(a) ensuring that documents, data, information and records collected under the customer due diligence process are kept updated and relevant, and undertaking regular reviews of existing records, particularly for higher risk facility holders;

(b) scrutinizing transactions to ensure that the transactions are consistent with the financial institution's knowledge of the customer, the facility holder's risk profile, and, where necessary, the source of funds;

(c) ensuring the obligations with regard to high risk facility holders, politically exposed persons, and correspondent relationships are fulfilled at all times.

13. Enhanced customer due diligence.

(1) Every financial institution shall apply enhanced customer due diligence measures to a business relationship or transaction with a facility holder, beneficial owner or financial institution from a jurisdiction assessed by the IRF Steering Committee and such enhanced measures shall be effective and proportionate to the risks identified.

(2) The financial institution shall —

(a) examine as far as possible the background and purpose of all complex, unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose;

(b) take such measures as may be prescribed from time to time, to counter the risks identified with respect to facility holders, beneficial owners or financial institutions assessed as high risk.

14. Risk assessment of politically exposed persons.

(1) Every financial institution shall have in place appropriate risk management systems to determine whether a facility holder or beneficial owner is a politically exposed person and shall —

(a) prior to establishing or continuing a business relationship with such facility holder or beneficial owner, obtain the approval of senior management of the institution;

(b) take reasonable measures to identify the source of wealth and source of funds of the facility holder;

(c) conduct enhanced on-going monitoring of the business relationship.

(2) A financial institution shall take reasonable measures to determine, prior to the time of pay-out on a life, or other investment related insurance policy, whether —

(a) a beneficiary thereof; or

(b) a beneficial owner of the beneficiary thereof,

is a politically exposed person, and if, so shall inform senior management before paying out the policy, apply the measures of subsection (1)(b) and if necessary submit a suspicious transaction report in accordance with section 26.

RECORD KEEPING

15. Financial institutions to maintain records.

(1) Every financial institution shall maintain all books and records with respect to their facility holders and transactions in accordance with subsection (2), and the financial institution shall ensure that such records and supporting information are available on a timely basis when required to be disclosed by law.

(2) The books and records referred to in subsection (1) shall include, as a minimum—

(a) records obtained through customer due diligence measures, including account files, business correspondence, and copies of all documents evidencing the identity of facility holders and beneficial owners, and the results of any analysis undertaken in accordance with the provisions of this Act, all of which shall be maintained for not less than five years after the business relationship has ended;

(b) records of transactions, both domestic and international, that are sufficient to permit reconstruction of each individual transaction for both account holders and non-account holders, which shall be

maintained for not less than five years from the date of the transaction; and

(c) records of any findings pursuant to section 11(1)(a) and related transaction information which shall be maintained for at least five years from the date of the transaction.

(3) Where a financial institution enters liquidation, the liquidator of a financial institution shall maintain for five years from the date of dissolution, such records that would otherwise have been required to be kept by the financial institution but for the liquidation.

16. How records are to be kept.

Records required to be kept under section 15 by a financial institution shall be kept in written form in the English language, or in a form readily accessible and convertible in written form in the English language.

17. Mandatory destruction of records.

(1) Subject to subsection (2), every financial institution shall ensure that —

(a) every record retained by that financial institution pursuant to any provision of this Part; and

(b) every copy of any such record,

is destroyed as soon as practicable after the expiry of the period for which the financial institution is required, by any provision of this Part, to retain that record.

(2) Nothing in this section requires the destruction of any record, or any copy of any record, in any case where there is a lawful reason for retaining that record.

(3) Without limiting the generality of subsection (2), there is a lawful reason for retaining a record if the retention of that record is necessary —

(a) in order to comply with the requirements of any other written law;

(b) to enable any financial institution to carry on its business; or

(c) for the purposes of the detection, investigation or prosecution of any offence.

18. Record keeping offences.

(1) A financial institution commits an offence under this section where in contravention of section 15 it fails, without reasonable excuse, to retain or to properly keep records.

(2) A financial institution which commits an offence against this section is liable on summary conviction to a fine not exceeding —

(a) in the case of any individual, twenty thousand dollars;

(b) in the case of a body corporate, one hundred thousand dollars.

INTERNAL CONTROLS

19. Financial institution to develop procedures.

(1) Every financial institution shall develop and implement procedures for the prevention of activities related to identified risks.

(2) The procedures referred to in subsection (1) shall be —

(a) approved by senior management and be monitored and enhanced, as necessary; and

(b) appropriate to the risks identified under section 5 or by the IRF Steering Committee;

(c) proportionate to the nature and size of the financial institution's business, but should at a minimum include —

(i) internal policies, procedures and controls to fulfil the obligations pursuant to this Act;

(ii) adequate screening procedures to ensure appropriate and high standards when hiring employees;

(iii) on-going training for all statutory directors, officers and employees to maintain awareness of the laws and regulations relating to identified risks, to assist in recognising transactions and actions that may be linked to identified risks, and instruct them in the procedures to be followed in such cases; and

(iv) independent audit arrangements to review and verify compliance with and effectiveness of the measures taken in accordance with this Act.

20. Designation of compliance officers.

(1) Every financial institution shall designate a compliance officer at senior management level to be responsible for the implementation of and on-going maintenance of the identified risk internal procedures and controls of the financial institution in accordance with the requirements of this Act.

(2) The compliance officer shall, on demand, have unrestricted access to all books, records and employees of the financial institution as may be necessary to fulfil his responsibilities.

21. Internal controls in a group of entities.

(1) All financial institutions that are part of a group of entities that are required to be compliant with this Part, shall implement group wide policies and procedures against activities relating to identified risks, addressing all aspects under subsections (1) and (2) of section 19 and including policies and procedures for sharing of information within the group for or related to customer due diligence, management of any identified risks and for safeguarding the confidentiality and use of the shared information.

(2) The policies and procedures referred to in subsection (1) shall be applied to all branches and majority owned subsidiaries of the group.

(3) Any compliance officer who conducts group-level compliance, audit, anti-money laundering and counter terrorism financing functions shall have the power to request account and transaction information of facility holder from branches and subsidiaries as necessary to fulfil their functions.

22. Minister may prescribe measures to be imposed on financial institutions.

The Minister may by regulations prescribe the type and extent of measures a financial institution shall undertake with respect to each of the requirements in this Part, having regard to the identified risks, the size of the business or profession, and the standards set by relevant professional bodies.

23. Compliance with obligations by foreign subsidiaries and branches.

(1) A financial institution shall require foreign branches and any subsidiaries over which it has control, to implement the requirements of this Act to the extent that the applicable laws and regulations in the jurisdiction where the foreign branch or subsidiary is domiciled so permit.

(2) Where the applicable laws in a foreign branch or subsidiary prevents compliance with these obligations for any reason, the financial institution shall apply appropriate additional measures to manage identified risks and advise the relevant Supervisory Authority.

24. Prohibition against shell banks.

(1) No —

(a) person shall establish, operate or deal with a shell bank;

(b) financial institution shall deal with a shell bank in another jurisdiction;

(c) financial institution shall enter into or continue a correspondent relationship with —

(i) a shell bank; or

(ii) a respondent institution, that permits its accounts to be used by a shell bank.

(2) Any person or financial institution that contravenes subsection (1) commits an offence.

(3) For the purposes of this section—

"**physical presence**" means meaningful mind and management located within a jurisdiction. The existence of a local agent or low level staff does not constitute physical presence; and

"**shell bank**" means a bank that has no physical presence in the jurisdiction in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision.

SUSPICIOUS TRANSACTIONS

25. Financial institutions to report suspicious transactions.

(1) Notwithstanding any other law, where —

(a) any person conducts or seeks to conduct any transaction by, through or with a financial institution (whether or not the transaction or proposed transaction involves cash); and

(b) the financial institution knows, suspects or has reasonable grounds to suspect that the transaction or proposed transaction—

(i) involves the proceeds of criminal conduct as defined Proceeds of Crime Act;

(ii) is related to an offence under the Proceeds of Crime Act;

(iii) is an attempt to avoid the enforcement of any provision of the Proceeds of Crime Act; or

(iv) is an identified risk,

the financial institution shall, as soon as practicable after forming that suspicion, report the transaction or proposed transaction to the Financial Intelligence Unit (hereinafter referred to as a "suspicious transaction report").

(2) Subject to subsection (3), a suspicious transaction report shall —

(a) be in the prescribed form (if any);

(b) contain the details specified in the *First Schedule*;

(c) contain a statement of the grounds on which the financial institution holds the suspicion referred to in subsection (1)(b); and

(d) be forwarded, in writing, to the Financial Intelligence Unit —

(i) by way of facsimile transaction; or

(ii) by such other means (including, without limitation, electronic mail or other similar means of communication) as may be agreed from time to time with the financial institution concerned.

(3) Notwithstanding subsection (2)(a) or (d), where the urgency of the situation requires, a suspicious transaction report may be made orally to the Financial Intelligence Unit, but in any such case the financial institution shall, as soon as practicable, forward to the Financial Intelligence Unit a suspicious transaction report that complies with the requirements of subsection (2).

26. Auditors to report suspicious transactions.

Notwithstanding any other law, any person who, in the course of carrying out the duties of that person's occupation as an auditor, has reasonable grounds to suspect, in relation to any transaction, that the transaction is or may be relevant to the enforcement of the Proceeds of Crime Act, shall report that transaction to the Financial Intelligence Unit.

27. Protection of identity of persons, etc. relating to suspicious transaction reports.

(1) Except for the purposes of the administration of this Act, no person shall disclose any information that will identify or is likely to identify the person who prepared or made a suspicious transaction report, or handled the underlying transaction.

(2) No person shall be required to disclose a suspicious transaction report or any information contained in the report or provided in connection with it, in any judicial proceeding unless the Court is satisfied that the disclosure of the information is necessary in the interests of justice.

28. Protection of persons reporting suspicious transactions.

(1) Where any information is disclosed or supplied by any person in a suspicious transaction report made, pursuant to section 25, by any person, no civil, criminal or disciplinary proceedings shall lie against that person —

(a) in respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or

(b) for any consequences that follow from the disclosure or supply of that information.

(2) Where any information is disclosed or supplied, pursuant to section 26, by any person, no civil, criminal or disciplinary proceedings shall lie against that person —

(a) in respect of the disclosure or supply, or the manner of the disclosure or supply, of that information by that person; or

(b) for any consequences that follow from the disclosure or supply of that information,

unless the information was disclosed or supplied in bad faith.

(3) Nothing in subsection (1) or subsection (2) applies in respect of proceedings for an offence under Part V.

29. Inapplicability of confidentiality provisions.

There shall be no liability for any breach of any secrecy or confidentiality provisions in any other law if a financial institution is fulfilling their obligations under this Act.

30. Tipping off.

(1) A person commits an offence —

(a) if he knows or suspects that any disclosure relating to a suspicious transaction has been made; and

(b) if he makes a disclosure relating to the suspicious transaction which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).

(2) A person who commits an offence pursuant to subsection (1) is liable —

(a) on summary conviction to a term of imprisonment of twelve years or to a fine not exceeding five hundred thousand dollars or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding twenty years or to a fine or to both.

PART III – ROLE OF THE COMPLIANCE COMMISSION

31. Continuation of Compliance Commission.

(1) The body known and existing as the Compliance Commission, established under section 39 of the Financial Transactions Reporting Act *(Ch. 368)*, immediately before the coming into operation of this Act is hereby preserved and continues in existence as the Compliance Commission.

(2) The persons serving as members of the Commission on the date of the coming into force of this Act, shall continue in office and shall be for the purposes of this Act, as if they had been appointed under this Act on the same terms and conditions until the expiration of their term.

(3) The *Second Schedule* shall have effect with respect to the constitution and procedures of the Commission and otherwise in relation thereto.

32. Functions of Commission.

(1) The functions of the Commission are —

(a) to maintain a general review of financial institutions in relation to the conduct of financial transactions and to ensure compliance with the provisions of this Act;

(b) to conduct on-site examinations of the business of a financial institution when deemed necessary by the Commission at the expense of the financial institution, for the purpose of ensuring compliance with the provisions of this Act, and in such cases where the Commission is unable to conduct such examination, to appoint an auditor at the expense of the financial institution to conduct such examination and to report thereon to the Commission.

(2) For the purposes of this section —

"financial institution" shall include those institutions specified in section 4 that are not otherwise subject to regulation by the Central Bank of The Bahamas, the Gaming Board, the Securities Commission of The Bahamas, the Insurance Commission of The Bahamas or the Inspector of Financial and Corporate Services.

33. Designated Non-Financial Business and Profession to register with Compliance Commission.

(1) Every financial institution within the definition of section 32(2) shall register with the Commission in the form provided by the Commission.

(2) Every financial institution referred to under subsection (1) —

(a) established before the coming into force of this Act which fails to register with the Commission within one month of the coming into force of this Act; or

(b) established after the coming into force of this Act, which fails to register within one month of commencement of business,

commits an offence and is liable to a penalty of five thousand dollars for each day that the financial institution remains unregistered.

(3) When a financial institution within the definition section 32(2) —

(a) has a change in registered office or principal place of business;

(b) has a change in beneficial ownership, director, partner, compliance officer or money laundering reporting officer,

the financial institution shall within three months of such change, notify the Commission.

(4) Where a financial institution fails to notify the Commission as required under subsection (3), the financial constitution commits an offence and is be liable to a penalty of five thousand dollars for each failure to notify in accordance with subsection (3).

34. Powers of Commission to require production of records.

(1) In the performance of its functions under this Act, the Commission may at all reasonable times require a financial institution—

(a) to produce for examination, such records that are required to be kept pursuant to section 15; and

(b) to supply such information or explanation, as the Commission may reasonably require for the purpose of enabling the Commission to perform its functions under this Act.

(2) Any person failing or refusing to produce any record or to supply any information or explanation as is required by subsection (1), commits an offence and is 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.

35. Confidentiality.

(1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or adviser of the Commission who discloses any information relating to the affairs of —

(a) the Commission;

(b) a financial institution; or

(c) a facility holder or client of a financial institution,

that it or he has acquired in the course of its or his duties or in the exercise of the Commission's functions under this or any other law, commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding three years.

(2) Subsection (1) shall not apply to a disclosure —

(a) lawfully required or permitted by any court of competent jurisdiction within The Bahamas;

(b) for the purpose of assisting the Commission to exercise any functions conferred on it by this or any other Act, or by regulations made thereunder;

(c) in respect of the affairs of a financial institution, facility holder or client of a financial institution, with the consent of the financial institution, facility holder or client, as the case may be, which consent has been voluntarily given;

(d) where the information disclosed is or has been available to the public from any other source;

(e) where the information disclosed is in a manner that does not enable the identity of a financial institution, facility holder or client of a financial institution to which the information relates to be ascertained;

(f) to a person with a view to the institution of, or for the purpose of —

(i) criminal proceedings;

(ii) disciplinary proceedings, whether within or outside The Bahamas, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties;

(iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Commission of his duties; or

(g) in any legal proceedings in connection with —

(i) the winding-up or dissolution of a financial institution; or

(ii) the appointment or duties of a receiver of a financial institution.

(3) Subject to subsection (6), the Commission may disclose to an overseas regulatory authority information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority.

(4) In deciding whether or not to exercise its power under subsection (3), the Commission may take into account —

(a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in The Bahamas or involve the assertion of a jurisdiction not recognised by The Bahamas; and

(b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in The Bahamas.

(5) The Commission may decline to exercise its power under subsection (3) if the overseas regulatory authority fails to undertake to make such contribution towards the cost of the exercise as the Commission considers appropriate.

(6) Nothing in subsection (3) authorises a disclosure by the Commission unless the Commission —

(a) has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality; or

(b) has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission; and

(c) is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and

(d) is satisfied that information provided following the exercise of its power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(7) Where in the opinion of the Commission, it appears necessary in relation to any request for assistance received from an overseas regulatory authority, to invoke the jurisdiction of a Stipendiary and Circuit Magistrate in obtaining information requested by the overseas regulatory authority, the Commission shall —

(a) immediately notify the Attorney-General with particulars of the request; and

(b) send the Attorney-General copies of all documents relating to the request,

and the Attorney-General shall be entitled, in a manner analogous to *amicus curiae*, to appear or take part in any proceedings in The Bahamas, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(8) The Commission may cooperate with any other regulatory authority in The Bahamas, including the sharing of information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law where it considers such cooperation or information may be relevant to the function of such other regulatory authority, or as a necessary part of a framework for consolidated supervision, oversight or regulation of the financial services sector.

(9) In this section, **"overseas regulatory authority"** means an authority which in a country or territory outside The Bahamas exercises functions corresponding to any functions of the Commission.

36. Minister may designate other body to carry out regulatory functions under this Act.

Upon the recommendation of the Commission, the Minister may by order designate any professional body, association, or entity which represents a sector of financial institutions as defined in section 32(2), with statutory authority—

(a) to regulate the activities of its members; and

(b) to ensure compliance with the provisions of this Act upon such terms stipulated by the Commission.

37. Codes of practice.

(1) The Commission may, from time to time, after consultation with —

(a) the Financial Intelligence Unit

(b) The Bahamas Bar Council;

(c) The Bahamas Institute of Chartered Accountants;

(d) The Bahamas Real Estate Association;

(e) such other bodies and organisations representative of such financial institutions as are required to be regulated under this Act,

issue such codes of practice as the Commission thinks necessary —

(i) for the purpose of providing guidance as to the duties, requirements and standards to be complied with and the procedures (whether as to verification, record-keeping, reporting of suspicious transactions or otherwise) and best practices to be observed by financial institutions;

(ii) generally for the purposes of this Act.

(2) Where a financial institution fails to comply with any code of practice issued pursuant to this section, the financial institution 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 any regulations made hereunder or under any other law in order to enforce the codes of practice.

PART IV – INVESTIGATION AND POWERS OF SEARCH

38. Search warrants.

Any Magistrate who, on an application in writing made on oath. is satisfied that there are reasonable grounds for believing that there is in or on any place or thing —

(a) any thing upon or in respect of which any offence against this Act or any regulations made under this Act has been, or is suspected of having been, committed;

(b) any thing which there are reasonable grounds for believing —

(i) will be evidence as to the commission of any such offence; or

(ii) is intended to be used for the purpose of committing any such offence,

may issue a search warrant in respect of that thing.

39. Form and content of search warrant.

(1) A search warrant shall be in the form prescribed and directed to a member of the Royal Bahamas Police Force (hereinafter referred to as the "Police Force") specified in the warrant, or generally to every member of the Police.

(2) Every search warrant shall —

(a) specify the place or thing that may be searched pursuant to the warrant;

(b) specify the offence or offences in respect of which the warrant is issued;

(c) provide a description of the articles or things that are authorised to be seized;

(d) state the period during which the warrant may be executed, being a period not exceeding fourteen days from the date of issue;

(e) specify any special conditions (if any) as the person issuing the warrant may specify therein.

40. Powers conferred by warrant.

(1) Subject to any special conditions specified in a warrant pursuant to section 39(3) every search warrant shall authorise the member of the Police Force executing the warrant —

(a) to enter and search the place or thing specified in the warrant at any time by day or night during the currency of the warrant;

(b) to use such assistance as may be reasonable in the circumstances for the purpose of the entry and search;

(c) to use such force as is reasonable in the circumstances for the purposes of effecting entry, and for breaking open anything in or on the place searched;

(d) to search for and seize any thing referred to in any of paragraphs (a) and (b) of section 38; and

(e) in any case where any thing referred to in any of those paragraphs is a document —

(i) to take copies of the document, or extracts from the documents;

(ii) to require any person who has the document in his or her possession or under his or her control to reproduce, or to assist the person executing the warrant to reproduce, in usable form, any information recorded or stored in the document.

(2) Every person called upon to assist any member of the Police Force executing a search warrant shall have the powers described in paragraphs (c) and (d) of subsection (1).

41. Person executing warrant to produce evidence of authority.

Any member of the Police Force executing a search warrant shall —

(a) have that warrant with him or her;

(b) produce it on initial entry and, if requested, at any subsequent time; and

(c) shall, if requested at the time of the execution of the warrant or at any subsequent time, provide a copy of the warrant within seven days after the request is made.

42. Notice of execution of warrant.

Every member of the Police Force who executes a search warrant shall, not later than seven days after the seizure of any thing pursuant to that warrant, give to the owner or occupier of the place or thing searched, and to every other person whom the member of the Police Force has reason to believe may have an interest in the thing seized, a written notice specifying —

(a) the date and time of the execution of the warrant;

(b) the identity of the person who executed the warrant;

(c) the thing seized under the warrant.

43. Custody of property seized.

Where property is seized pursuant to a search warrant, the property shall be kept in the custody of a member of the Police Force, except while it is being used in evidence or is in the custody of any court, until it is dealt with in accordance with this Act.

44. Procedure where certain documents seized.

Section 70 of the Criminal Procedure Code Act *(Ch. 91)* shall so far as applicable and with all necessary modifications, apply in respect of the seizure of any documents under any search warrant, as if the search warrant had been issued under section 70 of that Act.

45. Disposal of things seized.

(1) This section shall apply with respect to any thing seized under a search warrant.

(2) In any proceedings for an offence relating to any thing seized under a search warrant, the court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in such manner as the court thinks fit.

(3) Any member of the Police may at any time, unless an order has been made under subsection (2), return the thing to the person from whom it was seized, or apply to a Magistrate for an order as to its disposal and on any such application, the Magistrate may make any order that a court may make under subsection (2).

(4) If proceedings for an offence relating to the thing are not brought within a period of three months of seizure, any person claiming to be entitled to the thing may, after the expiration of that period, apply to a Magistrate for an order that it be delivered to him and on any such application, the Magistrate may adjourn the application, on such terms as he thinks fit, for proceedings to be brought, or may make any order that a court may make under subsection (2).

(5) Where any person is convicted in any proceedings for an offence relating to anything in respect of which a search warrant has been issued enabling seizure, and any order is made under this section, the operation of the order shall be suspended —

(a) in any case until the expiration of the twenty-one days for the filing of a notice of appeal or an application for leave to appeal;

(b) where a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and

(c) where application for leave to appeal is filed within the time so prescribed, until the application is determined and, where leave to appeal is granted, until the determination of the appeal.

(6) Where the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

PART V - OFFENCES

46. Interpretation.

For the purposes of this Part, a "**financial institution**" includes a director, partner, officer, principal or employee thereof.

47. Failure to comply with identification requirements.

A financial institution which intentionally —

(a) fails to carry out a risk assessment pursuant to section 5;

(b) fails to undertake the identification of a facility holder or otherwise to fulfil the identification or other requirements of the facility holder in accordance with subsections (2) through (5) of section 6;

(c) opens an anonymous account or an account in a fictitious name for a facility holder in violation of subsections (2) through (5) of section 6;

(d) establishes a shell bank or enters into a correspondent relationship with a shell bank or a financial institution that allows its accounts to be used by a shell bank in breach of the requirements of section 24; or

(d) fails to maintain books and records as required by section 16; destroys or removes such records; or fails to make such information available in a timely manner in response to a lawful request for such books or records,

commits an offence and is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or to both.

48. Failure to fulfil due diligence obligations.

A financial institution which intentionally—

(a) fails to conduct ongoing due diligence with respect to the accounts and transactions of facility holders in compliance with section 12;

(b) fails to comply with the obligations for enhanced due diligence in section 13; or

(c) fails to maintain internal control programs in compliance with sections 19 through 23,

commits an offence and is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or to both.

49. Failure to report suspicious transactions.

A financial institution which intentionally fails to submit a report to the Financial Intelligence Unit as required by sections 25 and 26 commits a summary offence and is liable to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or to both.

50. False or misleading statements.

A financial institution which —

(a) intentionally makes a false or misleading statement;

(b) provides false or misleading information; or

(c) otherwise fails to state a material fact in connection with its obligations under this Part, including the obligation to make a suspicious transaction or currency transaction report,

commits an offence and is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or both.

51. Confidentiality violation.

A financial institution which intentionally discloses to a facility holder or a third party information in violation of section 35 commits an offence and is liable upon summary conviction to imprisonment for a term of up to five years or to a fine of up to five hundred thousand dollars or to both.

52. Additional sanctions.

A financial institution convicted of an offence in sections 47 to 51 —

(a) is subject, in addition to the penalties set out therein, to the sanctions and measures available to the competent supervisory, regulatory or disciplinary authority for administrative violations; and

(b) may also be banned for such period as the Court, before whom the financial institution is convicted, thinks appropriate in all the circumstances, from pursuing the business or profession which provided the opportunity for the offence to be committed.

53. Defence.

(1) It is a defence to a charge against a person in relation to a contravention of, or a failure to comply with, any provision of Part II, if the defendant proves —

(a) that he took all reasonable steps to ensure that he complied with that provision; or

(b) that, in the circumstances of the particular case, he could not reasonably have been expected to ensure that he complied with the provision.

(2) In determining, for the purposes of subsection (1)(a), whether or not a financial institution took all reasonable steps to comply with a provision of this Part, the court shall have regard to —

(a) the nature of the financial institution and the activities in which it engages;

(b) the existence and adequacy of any procedures established by the financial institution to ensure compliance with the provision, including —

(i) staff training; and

(ii) audits to test the effectiveness of any such procedures; and

(c) any relevant guidelines issued by the Financial Intelligence Unit or any guidelines issued by any other Supervisory Authority.

PART VI – MISCELLANEOUS

54. Liability of employers and principals.

(1) Subject to subsection (3), anything done or omitted by a person as the employee of another person in the course of their employment shall be treated as done or omitted by that other person as well as by the first-mentioned person, where it was done with that other person's knowledge or approval.

(2) Anything done or omitted by a person as the agent of another person shall, for the purposes of this Act, be treated as done or omitted by that other person as well as by the first-mentioned person, unless it is done or omitted without that other person's express, implied or apparent authority, precedent or subsequent.

(3) In any proceedings under this Act against any person in respect of anything alleged to have been done or omitted to be done by an employee or agent of that person, it shall be a defence for that person to prove that the person took such steps as were reasonably practicable to prevent the employee or agent, as the case may be, from doing or omitting to do such thing.

55. Directors and officers of bodies corporate.

Where any body corporate is convicted of an offence against this Act or any regulations made hereunder this Act, every director and every officer concerned in the management of the body corporate is guilty of the offence where it is

proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission or consent, express or implied.

56. Non-compliance not excused by contractual obligations.

(1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any contract or agreement.

(2) No person shall be exempted from compliance with any requirement of this Act by reason only that compliance with that requirement would constitute breach of any contract or agreement.

57. Administrative penalties.

(1) Notwithstanding any penalties that may be imposed under this Act, any —

(a) financial institution that fails to comply with any provision of this Act or the Proceeds of Crime Act, 2018;

(b) employee, director or senior manager of a financial institution who knowingly concurs in a failure to comply with any provision of this Act or the Proceeds of Crime Act, 2018 ,

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.

58. Act to bind the Crown.

This Act binds the Crown.

59. Regulations.

The Minister may from time to time make regulations for all or any of the following purposes —

(a) prescribing the forms of application, reports and other documents required under this Act;

(b) prescribing amounts that are required to be prescribed for the purposes of this Act;

(c) prescribing, for the purposes of section 16 records to be kept and retained by financial institutions, or any specified class or classes of financial institutions, and the periods for which those records are to be retained;

(d) exempting or providing for the exemption of any transaction or class of transactions from all or any of the provisions of this Act;

(e) prescribing, for the purposes of this Act, what accounts and arrangements shall be deemed to be or not to be facilities, and the circumstances and conditions in which any account or arrangement shall be deemed to be or not to be a facility;

(f) prescribing, for the purposes of this Act, what persons or classes of persons shall be deemed to be or not to be financial institutions, and the circumstances and conditions in which any persons or classes of persons shall be deemed to be or not to be financial institutions;

(g) prescribing, for the purposes of this Act, what transactions shall be deemed to be or not to be occasional transactions, and the circumstances and conditions in which any transaction shall be deemed to be or not to be an occasional transaction;

(h) prescribing the manner in which any notice or other document required by this Act to be given or served;

(i) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, that may, on conviction, be imposed in respect of any such offences;

(j) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for their due administration.

60. Extension of Act.

For the purposes of this Act, sections 25 – 30 shall apply to providers of general insurance business as defined in section 2 of the Insurance Act (*Ch. 347*).

61. Repeals.

The Financial Transactions Reporting Act *(Ch. 368)* is hereby repealed.

FIRST SCHEDULE

(section 25(2)(b))

DETAILS TO BE INCLUDED IN A SUSPICIOUS TRANSACTION REPORT

1. The name, address, date of birth, and occupation (or, where appropriate, business or principal activity) of each person conducting the transaction (if known to the person making the report).
2. The name, address, date of birth, and occupation (or, where appropriate, business or principal activity) of any person on whose behalf the transaction is conducted (if known to the person making the report).
3. Where an account with a financial institution is involved in the transaction —
   (a) the type and identifying number of the account;
   (b) the name of the person in whose name the account is operated;
   (c) the names of the signatories to the account.
4. The nature of the transaction.
5. The amount involved in the transaction.
6. The type of currency involved in the transaction.
7. The date of the transaction.
8. In relation to the financial institution through which the transaction was conducted, the name of the officer, employee, or agent of that financial institution who handled the transaction.
9. The name of the person who prepared the report.

SECOND SCHEDULE

(section 32(3))

1. Membership of Commission.

The Commission shall consist of three members, appointed by the Governor-General in writing, being persons appearing to the Governor-General to have wide experience in, and to have shown capacity in, financial and commercial matters, industry, law or law enforcement.

2. Term of appointment.

The members of the Commission may be appointed for a term of three years and be eligible for reappointment.

3. Exclusion from membership.

A person may not be appointed a member or remain a member of the Commission who —

(a) is a member of either House of Parliament;

(b) is a director, officer or servant of, or has a controlling interest in, any financial institution.