AML/CFT Training for the Real Estate Sector

Date: July 3rd & 4TH 2019

Topic: Regulator Update & Risk Assessments

Functions of the Compliance Commission

- To ensure compliance with the provisions of the FTRA.
- Conduct on-site examinations of the business of the financial institution to ensure compliance with the provisions of the Act.
- Issue Codes of Practice to provide guidance as to the duties, requirements and standards to be complied with and the procedures (verification, record-keeping, reporting of suspicious transactions, risk-based framework or otherwise) and best practices.
- Obligations imposed by the Codes are enforceable in accordance with regulation 8 of the Financial Intelligence (Transactions Reporting Regulations) 2001 (FI(TR)R).
- Where the Commission is unable to conduct such examination, to appoint an auditor at the expense of the financial institution and to report thereon to the Commission.

Compliance Commission's Legislative Authority

- Require the financial institution to produce for examination records required to be kept pursuant to sections 15- records obtained through CDD measures including documents evidencing the identity of facility holders, beneficial owners and records of transactions.

- Requires financial institution to supply information/explanation as the Commission may reasonably require for the purpose of enabling the Commission to perform its functions.

- Any person failing or refusing to produce any record or to supply any information/explanation is guilty of an offence.

- Persons can be liable on summary conviction to a fine not exceeding fifty thousand or imprisonment for a term not exceeding three years or to both fine and imprisonment.

- The CC has issued a policy on Administrative penalties for registrants of the Compliance Commission under the FTRA 2018 effective February 6, 2019.

Obligations of The Compliance Commission

- The Compliance Commission is responsible for ensuring financial institutions/Designated Non-Financial Businesses and Professions (DNFBPs) under its supervision comply with AML/CFT laws, regulations and guidelines through a combination of:

✓ Registration

✓ On-site and off-site examination

✓ A risk-based approach to AML/CFT inspections

✓ Education

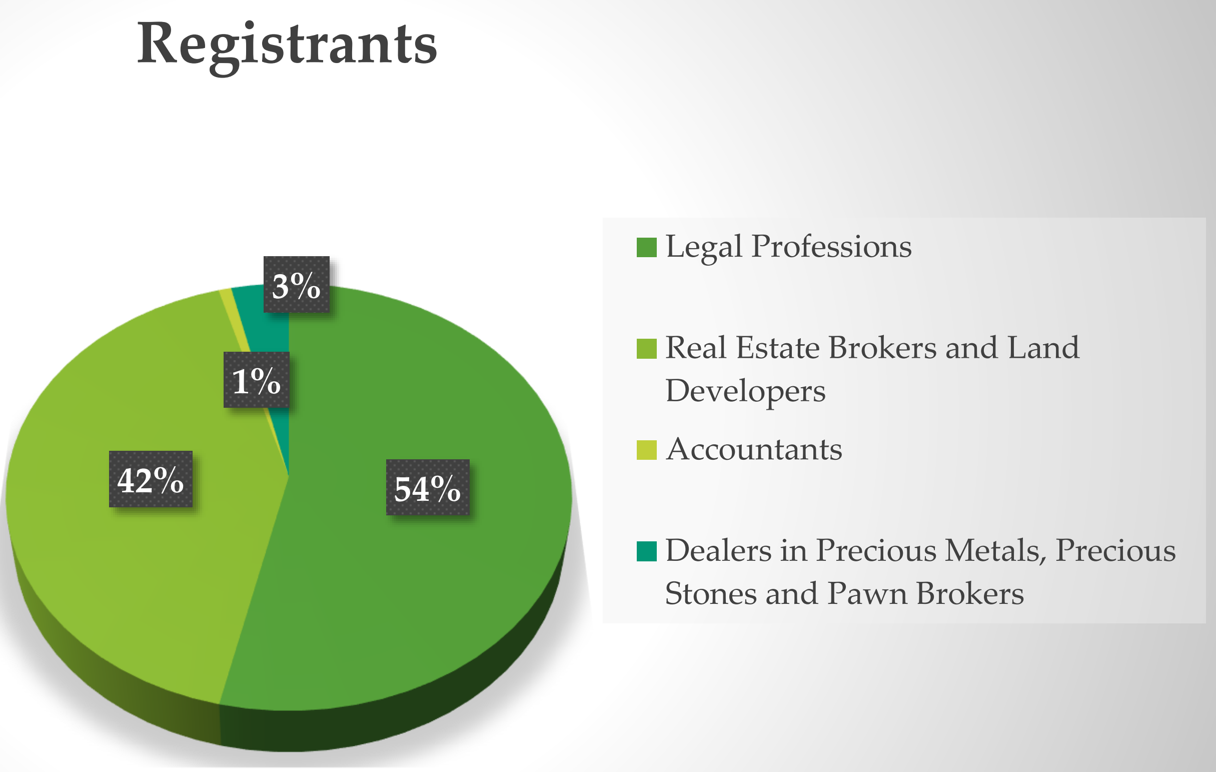
✓ Training, awareness and directives

✓ Notices and guidelines when necessary

Supervisory Bodies

- The Commission supervises Designated Non-Financial Businesses and Professions (DNFBP's) including Accountants, Lawyers, Real Estate Brokers & Land Developers and in 2018 Dealers in Precious metals, stones and Pawn Brokers are being brought under supervision. These institutions are specified in section 4 of the FTRA 2018 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 Agencies. In addition, the Compliance Commission supervises Designated Government Agencies.

Compliance Commission's Registrants



Lawyers-134
Real Estate Brokers & Land Developers-106
Accountants- 2
DPMS- 8

Key Legislative Update in FTRA 2018 impacting real estate agents, brokers and land developers

FTRA 2018	**FTRA 2000**
Section 4(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:	Section 3(g) A real estate broker, but only to the extent that the real estate broker receives funds in the course of the person's business for the purpose of settling real estate transactions
Section 4(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	N/A

DNFBP's are designated as financial institutions in Section 3 of the FTRA 2018 and must meet the obligations of the Act

"Now, now, now, there's no reason to be intimidated by compliance."

#RegTech
@trulioo

Bahamian AML/CFT Legislation

Requires Financial Institutions :

AML/CFT preventative measures and how do we protect the sector from abuse.

- Mandatory Registration For Real Estate Firms and Land Developers That Conduct The Services Specified In Section 4 (a) & (b) Of The FTRA 2018.
- Conduct and document a risk assessment of the business' products, services and operations to determine its level of exposure to the risks of money laundering, terrorist financing and other identified risks.
- Establish written risk-based AML/CFT policies and procedures approved by senior management that comply with the provisions of AML/CFT laws and guidelines.
- Appoint a Money Laundering Reporting Officer (MLRO) and a Compliance Officer(CO)
- Identify and verify customers, beneficial owners, PEPs and their source of funds. Apply enhanced CDD on high risk clients.

Bahamian AML/CFT Legislation

Requires Financial Institutions :

- Keep transaction, identification and verification records.
- Conduct on-going monitoring of customer transactions.
- Report suspicious transactions of money laundering and terrorist financing to the FIU, the police and other relevant agencies.
- Ensure the management and appropriate staff receive AML/CTF training annually.
- Conduct internal AML/CFT compliance reviews of its operations at least once per year.
- Submit to AML/CFT risk-based examination by the Commission and its appointed agents.
- Comply with provisions of the ATA 2018, POCA 2018, screen clients against UN sanctions list related to terrorist financing and proliferation financing, freeze any related funds, report to the FIU and relevant competent authorities.

AML/CFT Compliance Program

- Under the FTRA 2018 Financial Institutions including DNFBP's that provide the services defined under the Act have to fulfill specific obligations.

- A comprehensive and effective compliance program is the basis of meeting your obligations. During a CC examination, it is important to demonstrate that the documentation and procedures required by legislation is in place. In addition, employees and all others authorized to act on your behalf are well trained and can effectively implement all the elements of your compliance program. You must:

  - Appoint a compliance officer responsible for the implementation and oversight of the compliance program and Money Laundering Reporting Officer (MLRO) for the reporting of suspicious transactions internally, and to the Financial Intelligence Unit (FIU).
  - Develop and apply written compliance policies and procedures that are kept up to date and approved by senior management and available for review by the CC.
  - Apply and document a risk assessment, including mitigation measures and strategies;
  - Annual training for relevant staff is mandated by law. In addition, firms should develop and maintain a written training program for employees and others authorized to act on your behalf.

The Mutual Evaluation of The Bahamas

- The Mutual Evaluation Report (MER) was conducted by the Caribbean Financial Action Task Force (CFATF) in 2015 and published in July 2017 and is publicly available on the CFATF website.
- Financial Action Task Force (FATF)- objectives is to set standards and promote effective implementation of legal, regulatory and operation measures for combatting money laundering, terrorist financing and the financing of proliferation and other related threats to the integrity of the international financial system.
- Caribbean Financial Action Task Force- a FATF style regional body, it represents the Caribbean region and share common goals as the FATF (The Bahamas is a member)
- The MER analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the Bahamas AML/CFT system and provides recommendations on how the system could be strengthened.

The Mutual Evaluation of The Bahamas

- The High-Level Objective is that financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security.
- Technical Compliance, Effectiveness, Assigned Ratings.
- The Bahamas MER was not satisfactory, and we are presently in a follow up program, International Co-operation Review Group-ICRG, to address the deficiencies.
- Notably in December 2018, the CFATF released the first follow up report which analyzes the Bahamas' progress in addressing the technical evaluation report and re-rated the country upward of 13 of the Recommendations.
- The report concluded that "overall the Bahamas has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated favorably in 13 Recommendations.

Actions taken to address key deficiencies in the MER by the CC

- The FTRA 2018 requires mandatory registration for financial institutions conducting the business in Section 4 with penalty ($5,000 per day) along with requirement to notify the CC of any change of registered office, beneficial owner, partner, compliance officer or MLRO within three months of such change with penalty ($5,000 for each failure). The CC has established an enforcement unit that conducts market surveillance to detect firms not registered- we have already detected 33 and they are now registered.
- Implementation of the risk-based approach to supervision has begun and is ongoing.
- The CC has implemented an administrative penalty regime in 2019 to deal with failure to comply with AML/CFT requirements, distributed to registrants and the CC has begun applying the policy. So far, no fines yet!
- Updated AML/CFT guidance, Codes of Practice for DNFBP's (lawyers, accountants, real estate brokers & land developers in October 2018. Also, dealers in precious metals, precious stones & pawn brokers in April 2019) based on updated FATF standards and obligations.

Actions taken to address key deficiencies in the MER by the CC

- The CC issues awareness brochures to highlight AML/CFT obligations for all sectors covered, training is ongoing for all sectors. A guidance note was issued on eligible introducers and guidance on risk based approach CDD, PEPs, suspicious transactions and procedures and risk assessments is forthcoming. The National Risk Assessment summary report was distributed to registrants. Training for the sector is ongoing with all sectors covering ML/TF risks and typologies-DPMS will begin shortly.
- The Group of Financial Services Regulators including the CC, Central Bank of the Bahamas, Securities Commission of the Bahamas, Insurance Commission of the Bahamas issued a guidance note on Proliferation and Proliferation Financing- also financial crime- the CC includes this topic in ongoing training.

Actions taken to address key deficiencies in the MER by the CC

- The CC has increased staff and will be launching an updated website shortly which will increase available training offerings and automate a significant part of the supervisory functions including registration, notifications and data analytics.

- FATF Rec. 28.4 states that the competent authority should "take the necessary measures to prevent criminals or their associates from being professionally accredited, or holding a management function in a DNFBP - deficiency noted in the MER- The CC now has measures in place to conduct "fit and proper" test to meet this obligation and requirement is included in the Codes of Practice.

"I'm not here for committing a crime — I'm here for failing to comply with a guideline."

Financial supervision – Role of supervisor & risk based approach (RBA) to AML/CFT supervision

- Fundamentally, The RBA to AML/CFT supervision is focused on the process of identifying, analyzing, evaluating and mitigating ML/TF risks and the RBA facilitates the efficient allocation of resources as the supervisor can allocate its resources to the ML/TF risks identified as high and apply less stringent measures to low risk areas.
- The implementation of the risk based supervisory framework is ongoing. The CC has developed a risk-based framework inclusive of a risk matrix to assess and rate FIs and began the assessment of FIs. We have distributed a Risk Assessment Questionnaire to all relevant constituents. The objective of the risk assessment questionnaires is to gather pertinent information from FIs to allow the CC to determine the frequency and intensity of the examinations going forward. This assessment is expected to be completed by July 2019.
- The role of supervision in the AML/CFT framework is to supervise and monitor financial institutions to ensure their effective assessment and management of ML/TF risk and compliance with AML/CFT preventive measures.

What is a Risk Based approach

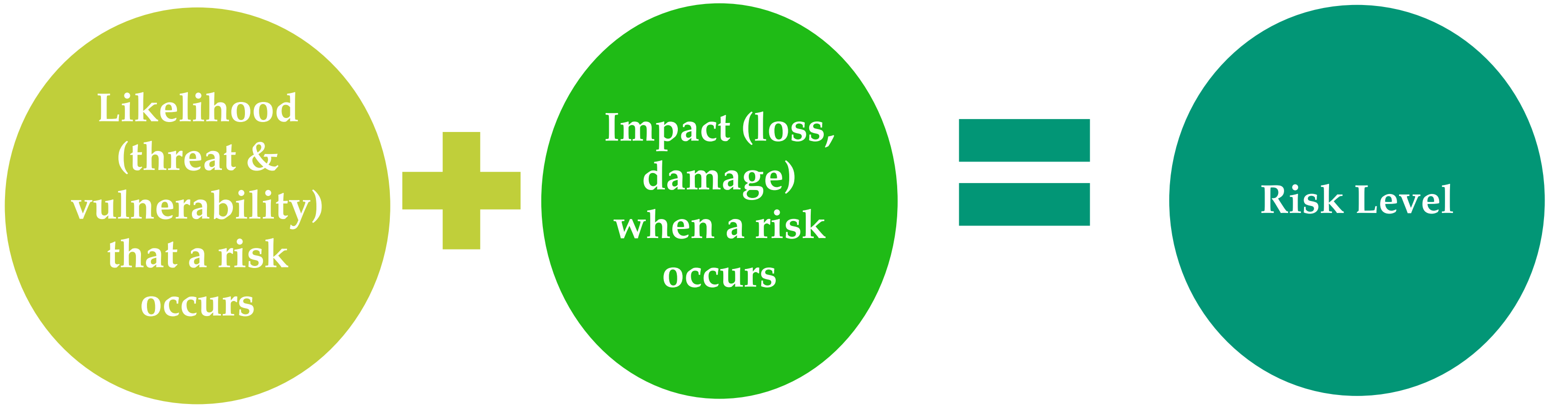
Identify the risks

Assess and understand the risks

Mitigate the risk

*What are risks?

- Risk is a function of the likelihood of occurrence of risk events and the impact of risk events.
- The likelihood of occurrence is a combination of threat and vulnerability, or in other words, risk events occur when a threat exploits vulnerability.
- The level of risk can be mitigated by reducing the size of the threats, vulnerabilities, or their impact.



Risk Assessment

- Required by all FIs in the FTRA 2018.
- The risk assessment must be documented, kept up to date and made available to the competent authorities.
- The FTRA 2018 requires all FI's to conduct a business related risk assessment of its identified risks (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).
- Take into account the risk assessment carried out at a national level – NRA in relation to customers, countries, or geographic areas, products, services, transactions and delivery channels.

Risk Assessment

- Needs to be conducted for all existing and new products, activities and processes.

- An assessment of identified risks proceeds from the assumption that different products and services offered by entities in their business operations, or different transactions executed by them, are not equally vulnerable to misuse by criminals.

- The purpose of a risk assessment is to apply control measures proportionate to the identified risk. This allows entities to focus on the customers, countries, products, services, transactions and delivery channels that constitute the greatest potential risk.

- Notably, in the past few weeks the Central Bank of the Bahamas has released a study concluding that with regard to international ML cross border real estate is one of four permanent risks.

Risk Assessment Guidance for DNFBP's

- To execute a risk assessment the firm must identify and assess the ML/TF risk related to customers, countries or geographic areas, products, services, transactions, and delivery channel. Then adopt appropriate measures to mitigate the risk and efficiently allocate resources on higher risk identified i.e. controls, policies and procedures. The risk assessment must be appropriate to the size and characteristics of the DNFBP.

- Within this framework 'inherent risk' represents the exposure to ML/TF risks in the absence of any control environment and "residual risk" is the risk remaining after the appropriate control measures have been applied to the inherent risk. The residual risk should be within the DNFBPs risk appetite and used to determine and assess whether the ML/TF risks within the firm are being adequately managed. These assessments can range from sophisticated models with scoring or simplified assessments or a matrix with risk ratings for the various categories of customers i.e. low or medium or high, geographic areas, products, services, transactions, delivery channel considering likelihood and impact.

- Customer risk – DNFBP's must determine if a type of customer carries an increased ML/TF risk e.g. cash intensive business, PEPs, customers that conduct their business relationships under unusual circumstances, complex ownership structures or domestic client,

Risk Assessment Guidance for DNFBP's

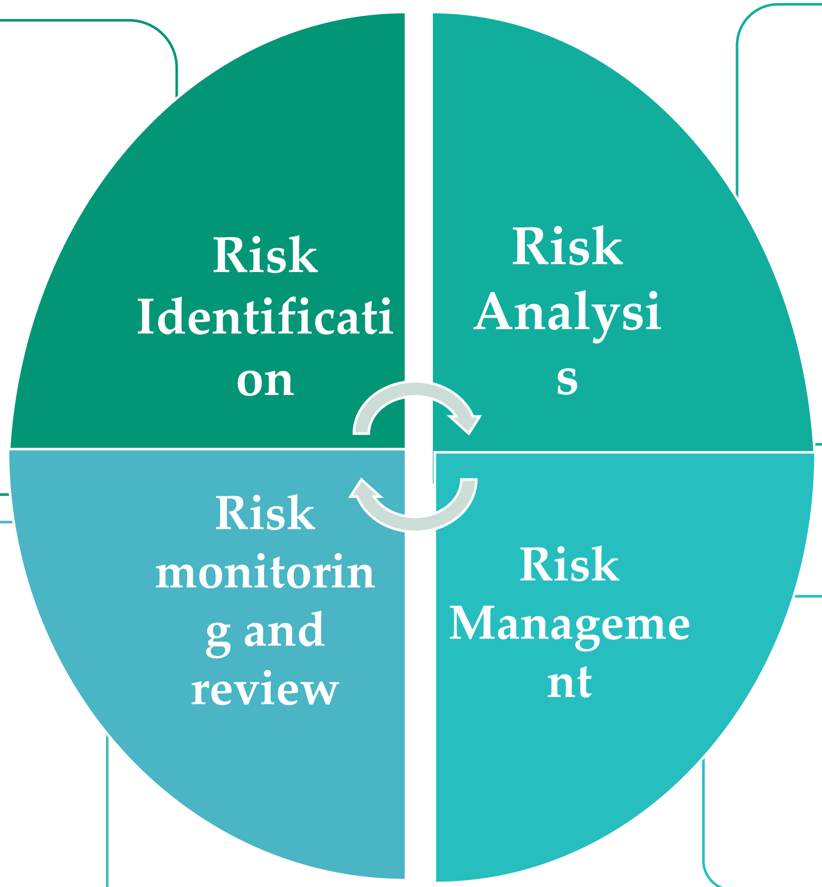
- Delivery Channel - meeting customers face to face or well known to the DNFBP relative to customers dealing through intermediaries or non-face to face is a factor is assessing customer risk.

- Transaction, product and service risks - DNFBP must consider risks arising from transactions, products and service that are offered e.g. non face- to- face transactions or services, purchase of valuable assets (real estate, precious metals etc.), private banking activities.

- Country or geographical risk - may arise due to location customer, origin of destination of transactions of the customer, the business activities of the DNFBP itself, countries subject UN sanctions or identified by FATF as lacking appropriate AML prevention system.

*Risk Assessment Method

- Business operations
- Countries
- Customers, delivery channels
- Products, services, transactions



- Likelihood &Impact
- Chance of risk occurring
- Cost or damages if risk occurred

- Review of risk analysis
- Compliance and audit programs

- Policies & procedures
- Systems & controls

Effective supervision – Role of supervisor & risk based approach (RBA) to AML/CFT supervision

Key basis of an effective supervisor framework:

- Market entry controls
- Understanding the ML/TF risks
- Supervision & monitoring to mitigate ML/TF risks
- Remedial actions & sanctions
- Effect of supervisory actions on compliance
- Promoting a clear understanding of AML/CFT risks and ML/TF obligations

CC's Supervisory Expectations

- DNFBP's must understand and mitigate risks, prevent abuse by criminals & fulfil the obligations under the AML/CFT laws.
- Understand ML/TF risk which the business is exposed to.
- Assess ML/TF risks of clients, products & services, geographical regions and delivery channels.
- Implement AML/CFT compliance program.

Thank You!